

“CONDITIONS OF USE” AT GAS TERMINALS

Risk allocation and insurance coverage



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1 Introduction

1.1 Topic and background

The topic of this thesis is to identify shipowner¹ risks arising from ‘Conditions of Use’ (CoU) at gas terminals and subsequently discuss possible insurance and charter party coverage of such risks.

CoU are standardised contracts issued by the port to the shipowner, allocating risks arising during the vessel’s port call. Many incidents may occur in relation to port calls, giving rise to a number of risks. Most ports require compulsory pilotage and tugs, and collision or striking may occur either between vessel and tug or between vessel and berth or other vessels. Furthermore, there may be accidents related to mooring, pollution, cargo operations and treatment of explosive substances, the latter of which is particularly relevant in the oil and gas trade.

The contracts are characterised by far-reaching liability provisions which often work to the effect that the shipowner becomes unlimitedly liable for all and any damage both to its own and the terminal’s interests as well as third party liabilities. The ordinary shipowner insurances do not cover liability which is more onerous than what follows from ordinary law, and this creates the need for additional insurance and charter party cover.

Since Norway has a world-leading position within carriage of natural gas, the CoU are frequently encountered by Norwegian vessels. Norway is the fifth largest shipping nation in the world, and holds significant market shares within carriage of oil, gas and chemical as

¹ The term ‘shipowner’ is used throughout this thesis instead of the wider Norwegian term ‘reder’. In the context of international contracts, it seems justifiable and appropriate. For the legal distinction between the two terms, cf. *Falkanger/Bull/Brautaset: Scandinavian Maritime Law – The Norwegian Perspective* 2nd edition (2004) pp. 139 et seq.

well as offshore services.² The petroleum industry contributes approximately one fourth of Norway's total value added.³

In an effort of dialogue between shipowners and terminals, Norwegian shipowners have tried to raise the issue of the CoU in SIGTTO⁴, but due to its non-technical nature, the topic was deemed to be outside the scope of the society's work. Notably, there is a clash of interest in SIGTTO, since both sides of the table are represented there.

On the other hand, gas charterers have a stronger negotiating position than shipowners due to the fact that the charterers are usually large international petroleum companies with a frequent ownership interest in the terminals. The charterers have proven successful e.g. in Ras Laffan⁵, where the conditions have been amended and subsequently approved by the P&I insurers.

1.2 The outline of the thesis

In order to facilitate an examination of this topic, the contracts will first be placed in a legal, practical, geographical and historical context.

Section 2 outlines the legal framework with contractual freedom, relevant background law and jurisprudence.

Section 3 provides the practical and geographical context with a description of the gas industry and markets.

Section 4 outlines characteristic features, historical background, similar practices and the contents of the contracts.

² *Norwegian Shipowners' Association*: Norsk skipsfart (URL: www.rederi.no/default.asp?V_ITEM_ID=501)

³ *Statistics Norway*: Naturressurser og miljø (URL: www.ssb.no/vis/magasinet/miljo/art-2007-01-24-01.html)

⁴ The Society of International Gas Tanker and Terminal Operators (URL: <http://sigtto.re-invent.net/DNN>)

⁵ Examined CoU are enclosed as an annex. Cf. page A at the back for an alphabetical list.

Section 5 discusses certain issues related to contract formation, more specifically the contract's binding effect and application with and without the master's signature.

Section 6 firstly contains a detailed discussion of the liability provisions with a view to examining their legal consequences for the shipowner and subsequently discusses whether such terms may be set aside or adjusted under Norwegian law.

Section 7 discusses insurance coverage and risk allocation between shipowner and charterer. Problems in relation to P&I⁶ insurance and hull insurance are examined separately, and the presentation also includes a suggested charter party provision drawn up by Nordisk Defence Club⁷ (Nordisk).

The final section summarises the main points of the thesis with an emphasis on how the contracts may be adjusted to obtain insurance cover.

2 Legal sources

2.1 Contractual freedom and relevant background law

Four different contracts are involved during a gas carrier's port call: i) the underlying sales contract, ii) the terminal's CoU, iii) the charter party and iv) the insurance contract(s).

With respect to i), it is sufficient to note that the gas charterer is also often the buyer of the cargo and has signed long-term charter agreements with independent carriers.

⁶ Protection and Indemnity, cf. 7.2 below

⁷ A mutual freight, demurrage and defence club which also acts as a maritime law firm for its members and other clients. Nordisk's main office is in Oslo, Norway (URL: www.nordisk.org)

With respect to ii), the majority of the CoU stipulate local choice of law and jurisdiction and the remaining stipulate English law and courts. Considering the various terminal contracts on the basis of their local jurisdictions is outside the scope of this thesis. Thus, Norwegian law will be used as the legal framework.

The Formation of Contracts Act of 31 May 1918 (No. 4) is the basis for Norwegian contract law. § 1 establishes the principle of contractual freedom, which gives the parties the freedom to decide on the contents of the contract. Nevertheless, § 36 of this act provides the courts with a discretionary measure for adjusting or setting aside contracts if the contractual freedom has been misused.

The main legal source of maritime law is the Norwegian Maritime Code (NMC) of 24 June 1994 (No. 39). CoU are not regulated in this statute, and thus there are not specific requirements to contents, making the Formation of Contracts Act § 36 the legal basis for setting aside or adjusting such terms.

There will also be references to English law, particularly in the discussions of the contract's binding effect and whether such contracts constitute general trade practice.

With respect to iii), NMC § 322 establishes freedom of contract in the charter party trade unless the trade is domestic, where certain restrictions apply. There is a widespread use of standard forms in the charter party trade, and these forms are often biased either in favour of the shipowner or the charterer. In the LNG trade the form ShellLNGTime1 is frequently used.

With respect to iv), the Insurance Contracts Act of 16 June 1989 (No. 69) is compulsory for Norwegian insurance contracts, but § 1-3 second subparagraph letter c) stipulates that it is supplementary for shipowner insurances. The contractual freedom in this area stems from the extent of professionalism dominating the trade, its international character as well as a

particular legislative technique where represented interests together have drafted the insurance conditions.⁸

In relation to the CoU, two different types of insurance are relevant, namely hull and P&I insurance, and these two are regulated by different conditions.

Hull insurance is regulated under the Norwegian Marine Insurance Plan 1996 version 2007 (NMIP). The NMIP regulates most aspects of marine insurance and has extensive commentaries which are to be regarded as part of the conditions.⁹ Although the NMIP is not binding and insurance may thus be effected on other conditions, it is in widespread use among Norwegian shipowners, and for the purpose of this thesis hull insurance will be discussed on the basis of the NMIP.

The main legal source for P&I insurance is the private conditions issued by the mutual P&I societies. For the purpose of this thesis, reference will be made to Gard¹⁰ Statutes and Rules 2008 (GR).

2.2 Case law

Case law is an important source for interpretation of contractual provisions, but so far there are no Scandinavian decisions on Conditions of Use. However, some aspects of concern for this thesis have been discussed in English case law.

Moreover, reference will be made to Scandinavian case law in the discussions of whether the contracts apply without the master's signature and whether such liability provisions may be set aside or adjusted by a Norwegian court.

⁸ *Wilhelmsen/Bull*: Handbook in hull insurance (2007), pp. 27 – 28

⁹ *Wilhelmsen/Bull*, p. 29 cf. the Commentary to NMIP § 1-4

¹⁰ The world's second largest P&I club (URL: www.gard.no)

2.3 Legal literature

Legal literature, although not a source of law in the strictest sense, is useful for finding arguments either for or against a position, and the arguments are particularly relevant if written by a person of authority in the field. The literature also gives a systematic presentation and review of the relevant legal sources.

Relevant literature will be discussed and cited where appropriate.

3 The gas industry

3.1 Gas processing and transportation

Natural gases are extracted from underground gas fields through wells in a gaseous state.¹¹ Before sea carriage can take place, the gases must be refined and liquefied at processing plants. The gaseous mixture consists of approximately 82 per cent methane, which is merchandised as ‘natural gas’ (LNG¹²) and 18 percent is a blend of ethane, nitrogen, propane, carbon dioxide, butane and pentane in decreasing order.¹³ Before LNG can be transported and utilised, the petroleum gases, which are slightly heavier than methane, must be extracted. When LNG has been refined, it consists of approximately 95 per cent methane and 5 per cent other substances.

The liquefied petroleum gases, LPG, are mainly propane and butane and are natural derivatives from the refining of either LNG or crude oil. Gas processing is the source of approximately 60 per cent of produced petroleum gases, and crude oil refining constitutes the origin of the remaining 40 per cent.

¹¹ Younger, A. H.: ‘Natural gas – processing principles and technology’, lecture (URL: www.ucalgary.ca/ENCH/class_notes/ench607/mainmenu.pdf)

¹² Liquefied natural gas

¹³ University of Texas, Bureau of Economic Geology: Introduction to LNG (URL: www.beg.utexas.edu/energyecon/lng/documents/CEE_INTRODUCTION_TO_LNG_FINAL.pdf)

Pipeline transportation is increasing its market share, but sea carriage is still the most common means of transportation due to lower costs. Pre-liquefied gas is led via terminals into large gas carriers through loading arms connected to the vessel's piping system.

During transportation, the gas is kept at boiling point by removing the vaporised gas from the tanks and either running it through a reliquefaction plant and returning it to the tanks (typical on LPG carriers), or channelling the vapour into the vessel's boilers, thus utilising it for main propulsion (typical on LNG carriers). The boiling point of LNG at ambient pressure is -160°C . Such low temperatures require special design materials and safety measures.

The gas trade is predominantly a charter party trade, characterised by long-term charter parties. The LNG trade may be compared with liner shipping with its 20-year long charter parties and a few regular ports.

3.2 The LNG market

Hydrocarbon gases are used for generating electricity and as raw material for fibres, clothing, plastic, health care, computing and furnishing. In the USA these gases are also utilised in private households for cooking and heating.¹⁴

The LNG shipping market is continuously expanding, with 275 tankers in operation and 102 on order as of August 2008.¹⁵

Worldwide, there are 26 existing export or liquefaction terminals, located on or off shore, in 15 countries.¹⁶ Contrastingly, there are 60 existing import or regasification terminals, on

¹⁴ *University of Texas, Bureau of Economic Geology*: Introduction to LNG

¹⁵ *Shipbuilding history*: The order book of LNG carriers (URL: www.shipbuildinghistory.com/world/highvalueships/lngorderbook.htm)

¹⁶ *The California Energy Commission*: LNG international (URL: www.energy.ca.gov/lng/international.html)

or off shore, in 18 countries. In addition to these existing terminals, there are approximately 65 liquefaction terminal projects and approximately 181 regasification terminal projects, either proposed or under construction all around the world, although it is not expected that all proposed terminals will be constructed.

The following nations export LNG (start-up year in parenthesis):

Algeria (1971)
Australia (1989)
Brunei (1972)
Equatorial Guinea (2007)
Egypt (2004)
Indonesia (1977)
Libya (1970)
Malaysia (1983)
Nigeria (1999)
Norway (2007)
Oman (2000)
Qatar) (1997)
Trinidad and Tobago (1999)
United Arab Emirates (1977)
United States of America (1969)

The following nations import LNG:

Belgium (1987)
China, People's Republic of (2006)
Dominican Republic (2003)
France (1972)
Greece (2000)

India (2004)
Italy (1971)
Japan (1969)
Mexico (2006)
Portugal (2003)
Puerto Rico (U.S. outlying territory) (2000)
South Korea (1986)
Spain (1969)
Taiwan (Republic of China) (1990)
Turkey (1992)
United Kingdom (2005)
United States of America (1971)

Experts predict that by 2030 natural gas will be meeting 25 per cent of global energy needs.¹⁷ Obviously, this places the export ports in an increasingly strong negotiating position with respect to the Conditions of Use.

4 An outline of the Conditions of Use

This section outlines the characteristic features and historical background of the CoU and provides an overview of their contents.

4.1 Characteristic features

Conditions of Use in gas carriage are standardised contracts for use of LNG and LPG ports. Such conditions are mainly found at export terminals in Africa, the Middle East, Indonesia and Mexico.

¹⁷ *Ahsan, Muhammad Farooque*: LNG re-enters the world energy market, Pipeline and Gas Journal (URL: http://findarticles.com/p/articles/mi_m3251/is_11_233/ai_n24996339?tag=artBody:col1)

These contracts often imply unlimited and strict, or far-reaching, liability for the shipowner and entail wide disclaimers on behalf of the terminal, thus resulting in a channelling of all liability under the contract to the shipowner. Moreover, the contracts are so general and comprehensive in their form that it is difficult to quantify the extent of exposure. Furthermore, the requirement for causation is limited or non-existent, and the fact that the contracts are often subject to local law, implying a wide range of exotic laws, makes this risk more difficult to determine.

A descriptive comment about the Conditions of Use is found in the English Court of First Instance decision *The Polyduke*,¹⁸ concerning berth damage covered by an indemnity provision used by an oil terminal.

*'[A] common pattern of these conditions is to purport to cast upon the shipowner an extremely wide measure of risks and liabilities. Although the documents vary in their form and content, their general effect is to seek to cast upon the shipowners all risks of loss and damage to the vessel or to their owners, and all liability for loss or damage to the installations and to their owners or occupiers which might arise in connection with the vessel's user [sic] of the terminal, howsoever such loss or damage might be caused, and even if the cause might be some negligence or default on the part of the owners or occupiers of the terminal.'*¹⁹

4.2 Background and similar practices

It is likely that Conditions of Use found their way into the gas trade from the oil trade. *The Polyduke* decision contains a statement to the effect that CoU were employed by oil terminals already in the 1950s.²⁰

¹⁸ [1978] 1 Lloyd's Rep 2-11 (Bahamas Oil Refining Co. vs. Kristiansands Tankrederi A/S and Others and Shell International Marine Ltd.), Kerr J presiding

¹⁹ p. 214

²⁰ p. 214

The decision also states that the employment of such contracts in the oil trade *'follows that of a number of widely used and somewhat notorious conditions in other fields concerning shipping.'*²¹

Equally imbalanced conditions are found in contracts regulating pilotage and tug hire. Tug contracts are standardised contracts which protect the tug company from liability to a significant extent and impose a considerable degree of liability on the shipowner for damage caused to the tug company.²² The shipowner may also be forced to accept contractual collision liability and waiver of the right to claim damages in so-called *'Let Pass Agreements'* or *'Port conditions'* in order to use a canal or waterway to enter a port.²³

Nevertheless, according to the court in *The Polyduke* case, *'whereas the shipowners and their insurers have come to accept similar conditions in relation to tug contracts, perhaps because they are so widespread and do not give rise to risks of the same magnitude, there has been a considerable measure of resistance to the unqualified acceptance of such conditions when sought to be imposed by oil terminals,'* quoting as reason that the P&I insurance *'cover will not extend to liabilities arising under contractual indemnities [...] unless their terms have previously been approved'* by the insurers.²⁴

This has led to the development of side letters in the oil trade, whereby the P&I insurers have made the terminals agree not to rely on the terms of the indemnity clauses if the loss is resulting from negligence or default on the part of the terminal.²⁵ However, side letters are not so common in the gas trade.

²¹ p. 214

²² *Falkanger/Bull/Brautaset*, p. 156

²³ *Wilhelmsen/Bull*, p. 287

²⁴ p. 214

²⁵ p. 214

4.3 Contractual contents

The Conditions of Use may differ in structure, but the contents are very similar.

Firstly, there is an indemnity provision implying strict liability for the shipowner arising out of any loss or damage to the terminal facilities or injury or death of any person employed there. In the majority of the contracts, this provision expressly states that liability applies regardless of any negligence or default by the vessel, shipowner or its servants.²⁶

Secondly, the contracts normally include an indemnity provision stipulating that the shipowner must hold the terminal harmless from any claim by third parties.

Thirdly, the terminal disclaims all liability for any loss, damage or delay on the part of the shipowner arising from the use of the terminal, even where it is due to the terminal's own fault.

Fourthly, there is a warranty disclaimer for the safety and suitability of the port. There is also normally a separate disclaimer related to losses caused by pilots, tugs and other navigational services.

Fifthly, the contracts often include a warranty by the shipowner for the suitability and capability of the vessel.

Sixthly, the majority of the conditions include provisions granting the terminal the right to remove any sunken or grounded vessel, placing all expenses incurred thereby with the shipowner.

Seventhly, the contracts often require indemnification for pollution or discharge.

²⁶ The shipowner's servants include inter alia the master, crew and agent, and the terminal's servants include inter alia mooring and cargo personnel. The position of pilots and tug crew is unclear, as they may be regarded as either the shipowner's or terminal's servants under the contract, cf. 6.3.1 below.

Finally, several contracts stipulate that the vessel may be detained until sufficient security can be posted.²⁷ This may lead to offhire losses for the shipowner.

5 Contract formation

This section discusses certain issues related to contract formation, more specifically the contracts' binding effect and application with and without the master's signature.

Under Norwegian law the legal basis for contract formation is found in the Formation of Contracts Act Chapter 1. This statute draws on common Scandinavian principles of contract formation, and the starting point is freedom of contract, cf. § 1. In commercial contracts this freedom is frequently used to agree on separate terms for creating a legally binding agreement.²⁸

CoU are not agreed documents, but should rather be regarded as a type of standard form contracts, which are often used to impose liability exclusions which have not been negotiated.²⁹ Although legislation has been adapted to protect consumers from unreasonable contract terms,³⁰ this does not apply to the shipowner since contracting parties in shipping are traditionally regarded as equal commercial parties, bargaining freely to reach an optimal result.³¹ However, in this case neither negotiations nor rejection is available.

The contractual relationship between shipowner and terminal is formed via the master when the vessel enters the port. During the initial phase of the port call the local authorities

²⁷ Sharjah Clause 2 and '*Conditions binding upon all users of Port Rashid Dubai*' Clause c)

²⁸ *Woxholth: Avtalerett*, 6th edition (2006), p. 149

²⁹ *Poole: Textbook on contract law* 8th edition (2006)

³⁰ The Norwegian Marketing Act of 16 June 1972 (No. 47) § 9 a.

³¹ Rt. 1948.370 NSC is authority to the fact that the freedom of contract is almost unlimited in professional relationships, particularly with respect to standard contracts

will present the master with the contract for signing and stamping. The master's signature is compulsory, and there is no room for negotiations. Unless the master signs he will not be allowed to berth, and it is not an option to go to another port.

Several CoU also expressly apply regardless of the master's signature.³²

5.1 The contract's binding effect - the English position

CoU have never been discussed by a Norwegian court, but their binding effect has been considered under English law.

The owner of *The Polyduke* contended that the contract's indemnity clause was not binding, using the following arguments:

- 1) the clause had no contractual effect at all because
 - a) the provision, being extremely wide and wholly unreasonable, required special notification
 - b) the word '*Received*' above the master's signature did not imply assent
 - c) the document was not a contract, but rather an administrative paper³³
- 2) or if the contract did have legal effect, it was not binding because the master had no authority to sign the document.³⁴

The court held that the wording of the contract proved that it was clearly intended to have legal effect.³⁵ In the absence of any evidence by the master that he had sought to displace the contractual effect of his signature or that he had not understood the contractual terms, the court had to assume that the contract was entered into intentionally. In any case, any

³² Cf. 5.3 below

³³ p. 215

³⁴ Cf. 5.2 below

³⁵ p. 215

lack of understanding or intention on the part of the master would have failed as a legal argument. This was not a ‘ticket’ case, where some document, like a receipt, was merely handed over and thus required prior or special notice. Under English law, in the absence of fraud or misrepresentation, a signature binds and signifies knowledge and assent.

A corresponding dispute under Norwegian law would have been treated as a question of setting aside or adjusting an already existing contract under the Formation of Contracts Act § 36, where formation is one of several elements of censorship.³⁶ However, as long as the contract is signed by the master within his scope of authority, it is not likely that the word ‘received’ would influence the binding effect of his signature.

5.2 The master’s authority to enter into contracts

Questions of validity may also arise in relation to the master’s authority to enter into contracts on behalf of the shipowner, particularly if he accepts extra burdensome conditions.

Under Norwegian law, the provisions pertaining to the master’s authority are found in NMC Chapter 6. § 137 gives the master far-reaching authority to enter into contracts on behalf of the shipowner, including towage contracts.³⁷ Moreover, the master may conclude contracts relating to ‘*the performance of the voyage and to make agreements for the carriage of goods on the voyage*’. CoU are agreements that need to be entered into in order to be allowed to berth, and should thus be considered as necessary both for the performance of the voyage and the carriage of goods. Thus, the master has authority to bind the shipowner when signing the CoU. The master himself, however, is not bound, cf. § 139.

The English position on the master’s authority to bind the shipowner is made clear by *The Polyduke* decision.³⁸ The shipowner contended that the contract was not binding because

³⁶ Cf. 6.4 below

³⁷ *Falkanger/Bull/Brautaset*, p. 235

³⁸ Cf. 5.1 above

the master had not had the authority to accept such extra burdensome conditions on its behalf. However, based on the evidence the court held that i) in the tanker trade there is a general practice of masters being required to sign such CoU, thus giving the master implied and ostensible authority to do so, and ii) such documents are generally regarded as liable to have contractual effect.³⁹

The evidence also showed that it was left to the discretion of the master to conclude contracts on behalf of the shipowner, providing the master with the express authority to do so. The evidence also showed that the CoU were of a class which it was customary to sign, and the master's orders were to berth at the terminal, which he could not have done without signing this document, providing him with implied authority.⁴⁰ Moreover, no action had been taken against this master for having signed such contracts, neither on this occasion nor any other.⁴¹

The fact that there is a general practice for masters to sign such documents, also supports the master's authority under the NMC § 137.

5.3 Application without the master's signature

Many contracts contain provisions to ensure application even in the absence of the master's signature: *'[T]he following shall be deemed to have been specifically accepted by any vessel visiting the port regardless of whether such acceptance is specific, in writing or otherwise.'*⁴²

³⁹ p. 215

⁴⁰ p. 216

⁴¹ p. 216

⁴² Hazira Clause 2. 1st subparagraph, last sentence

Another example: *'Use of the Terminal (including use of services) shall constitute acceptance by the Owners of the Conditions of Use [...] regardless of whether the Master has executed the Master's Acknowledgement.'*⁴³

Thus, the contracts apply even if not signed, as they shall be deemed to have been specifically accepted by any visiting vessel.

A parallel may be drawn to parking conditions under Scandinavian law, where the rationale is that when a driver parks his car, he is complying with the expectation from the owner of the premises that an agreement for remuneration has been formed. Both a Swedish Supreme Court decision⁴⁴ and a Norwegian Court of Appeal decision⁴⁵ constitute authority that a binding agreement is being formed by the act of parking the car without the need for a signature. By analogy, the master's 'parking' of the vessel may be regarded to eliminate the need for his signature.

The CoU may also be compared to standard terms, which are customarily introduced by a party in addition to the signed contract. The Formation of Contracts Act is silent upon the subject of standard terms, but case law gives guidelines concerning the terms of acceptance.⁴⁶ The main rule with respect to standard terms is that in order to apply, they must have been brought to the other party's attention before signing,⁴⁷ which is the case for the CoU.

Such contracts may also have been pre-approved as part of the charter party. There are examples that long-term charter parties concerning carriage from specific terminals

⁴³ Punta Europa Clause 2.6 2nd subparagraph

⁴⁴ NJA 1981.323 SSC

⁴⁵ RG 1991.736 NCA

⁴⁶ Woxholth, p. 192

⁴⁷ Woxholth, p. 192

implement the conditions as an addendum to the charter party stating that they have been accepted by the shipowner.⁴⁸

6 The liability provisions – indemnities and disclaimers

6.1 Two approaches: Indemnification and disclaimer clauses

The focus of this thesis is on the liability provisions of the contracts, although several of the CoU also include technical guidelines and procedures for use of the terminal. This section will discuss the main principles of allocation of liability in the CoU with a comparative view to differences and similarities between the contracts.

The liability provisions are structured in two different ways, either as indemnity or disclaimer clauses. Indemnification renders a party harmless from expenses that would otherwise have fallen on it, whereas a disclaimer clause disclaims liabilities that would otherwise have attached to the disclaiming party. Consequently, if a clause indemnifies a party from a liability, this indemnity clause operates as a disclaimer for that party. A far-reaching indemnity clause removes the need for a disclaimer because it is sufficient for the indemnified party to require indemnification from damages and losses to its own interests and from expenses imposed by others as well as from liabilities towards the contractual partner and third parties. As a result, indemnity and disclaimer clauses sometimes overlap and different contracts may use either an indemnity or a disclaimer clause to allocate the very same liability.

Usually, the indemnity clauses regulate the shipowner's liability for terminal interests and the disclaimers regulate the terminal's disclaiming of liability for shipowner interests. Third party liabilities may be allocated either as indemnities or disclaimers. However, the

⁴⁸ Rygh (*Nordisk Defence Club*): Terminalvilkår "Conditions of Use", lecture at a meeting in CMI Norway (31 March 2008)

indemnity and disclaimer clauses produce the joint effect that all liability rests with the shipowner. However, despite this difference in structure, the allocation of liability is generally the same in all the CoU.

In traditional contractual relationships allocation of risk is based on compensation for damages. There must be a causal link between the damaging incident and the ensuing loss, and if there is no such link, the loss will lie where it falls.⁴⁹

The CoU, however, are based on the concept of an economic allocation of risk independently of the principle of liability in negligence. The risk allocation of such contracts implies a marked departure from what is usual in the background law. Under such an *allocation of risk model*, commonly used in petroleum contracts,⁵⁰ the procedure is to allocate the losses not only of the contractual parties but also of third parties.⁵¹ As regards the latter, the contractual parties may not reduce a third party's rights, but may freely regulate recourse and indemnity provisions.⁵² Thus, the risk allocation in the CoU in principle covers all losses arising from the contract.

Under an *allocation of risk model* a central point is that risk allocated to one of the parties lies there regardless of fault. This may cause more liability to lie with one party than what follows from background law.⁵³ Furthermore, the far-reaching disclaimer clauses for damage to the other party's property results in less liability than what would otherwise have been imposed on it.⁵⁴

A model where all risk has been allocated to one of the parties has been called *the unilateral strict liability model*.⁵⁵ Under this model one contractual party must bear all

⁴⁹ Bull: Tredjemannsdekninger i forsikringsforhold (1988), p. 337

⁵⁰ Bull, p. 337

⁵¹ Bull, p. 338

⁵² Bull, p. 339

⁵³ Bull, p. 353

⁵⁴ Bull, p. 346

⁵⁵ Bull, p. 357

losses to its own interests as well as to the other party's interests regardless of cause, provided that the losses may in any way be related to activities under the contract. Hence, such contracts imply strict liability regardless of fault. The CoU follow the principles of the *unilateral strict liability model*.

In this section a distinguishing line will be drawn between the shipowner's liability for terminal interests on the one hand (6.2) and the terminal's disclaiming of liability for shipowner interests on the other hand (6.3). The last subsection will discuss whether such provisions may be set aside or adjusted under Norwegian law (6.4).

6.2 The shipowner's liability for terminal/port interests

Under Norwegian law the starting point for establishing liability is i) basis of liability, ii) causation and iii) economic loss. Liability may be based in statute, contract or tort and is either *strict* or *in negligence*.

The traditional approach under Norwegian law is that liability for damages is triggered by negligence.⁵⁶ Liability in negligence is liability for loss or damage caused by a negligent or unjustifiable act or omission, whereas strict liability arises without fault.⁵⁷

In contracts, liability in negligence is sometimes replaced by liability in negligence with a reversed burden of proof. The latter lies between strict liability and negligence-based liability,⁵⁸ since a reversed burden of proof may be impossible to lift, thus rendering a person liable without fault.⁵⁹

⁵⁶ Falkanger/Bull/Brautaset, p. 161

⁵⁷ Lødrup: Lærebok i erstatningsrett 5th edition (2006), p. 35

⁵⁸ Lødrup, p. 35

⁵⁹ Falkanger/Bull/Brautaset, p. 163

Moreover, a person is also vicariously liable for the faults of its employees and contractors⁶⁰ under Norwegian law.⁶¹ Vicarious liability is a form of strict liability in the sense that the liable person itself has not been negligent.⁶² However, the person is only liable if the fault is such that the servant would have been personally liable.⁶³

In maritime law vicarious liability is contained in NMC § 151, which stipulates that the shipowner is liable for *'the fault or neglect of the master, crew, pilot, tug or others performing work in the service of the ship.'* It follows from this definition that the vicarious liability encompasses both regular employees, self-employed personnel and sometimes even other people's employees, like pilots and tugs, as long as they are *performing work in the service of the ship.*⁶⁴ There is some disagreement concerning whether § 151 includes contractual liability, but this issue is less practical since there is general consensus that contractual liability extends at least as far as the tort liability under § 151.⁶⁵

This subchapter will discuss the practical solutions in the contracts with respect to the shipowner's liability for terminal/port interests. 6.2.1 will present the parties liable under the contracts, 6.2.2 will examine the basis of liability including vicarious liability, 6.2.3 will discuss causation, 6.2.4 will present indemnified parties and losses covered and 6.2.5 will examine possible limitations of the shipowner's liability.

6.2.1 Liable parties

The shipowner is always liable for the terminal's losses.⁶⁶ Furthermore, some contracts stipulate direct liability for other parties in addition.

⁶⁰ A 'contractor' is a person or a company that contracts to supply materials or labour and thus becomes a self-employed servant of the contractee.

⁶¹ Cf. Torts Act of 13 June 1969 (No. 26) § 2-1 and ordinary background law

⁶² Falkanger/Bull/Brautaset, p. 163

⁶³ Falkanger/Bull/Brautaset, p. 163

⁶⁴ Falkanger/Bull/Brautaset, p. 174

⁶⁵ Falkanger/Bull/Brautaset, pp. 175 – 176

⁶⁶ Inter alia Punta Europa Clause 2.1 (a)

The Kuwait Conditions contain the widest scope of liable parties: The vessel or its owners, charterers, managers or operators are liable for terminal damage, whereas the same entities are *jointly and severally* liable for third party damage.⁶⁷ It is not clear whether this distinction is intentional.

This raises the question of whether joint and several liability should be read into the contract where not specified. The starting point under Norwegian tort law is that where there is more than one tortfeasor, there is joint and several liability.⁶⁸ Thus, where there are several liable parties, joint and several liability should be assumed.

The majority of the contracts stipulate that the vessel and the shipowner shall hold the terminal harmless.⁶⁹ Under Norwegian law, the starting point is that if a vessel is held liable, the shipowner is held liable since the vessel is identified with its owner. However, if the shipowner has outsourced a broad range of management functions, liabilities incurred by the ship will be channelled to the manager.⁷⁰

The Ras Laffan and Sharjah Conditions stipulate joint and several liability between master and shipowner,⁷¹ and Port Rashid defines the liable party as inter alia '*any person, vessel*'⁷² which may implicate anyone on board ship as well as the shipowner. Direct action against the master and other crew members is possible under ordinary law, but is less practical due to limited possibilities of full recovery.

⁶⁷ Clause 4

⁶⁸ Torts Act § 5-3

⁶⁹ Qalhat Clause 1c), Escravos Clause 5, Bonny Clause 5.1 4th subparagraph, Altamira Clause 5, Braefoot Bay Section A (a) (ii), Abu Dhabi Clause 4 and Kharg Clause 4

⁷⁰ *Falkanger/Bull/Brautaset*, p. 141, cf. Punta Europa Clause 1 7th subparagraph: '*Owners*' means '*the owners or managers (as relevant) of any vessel using the Terminal.*'

⁷¹ Clauses 6 and 2, respectively

⁷² '*Conditions binding upon all users of Port Rashid Dubai*' 1st subparagraph

6.2.2 Basis of liability

The first requirement for compensation under Norwegian law is that there is a basis of liability.

All the CoU are to a certain extent built on the principle of unilateral liability. In the majority of the contracts the shipowner is required to pay for any loss *‘due to whatever reason and irrespective of whether there has been any negligence or default on the part of the vessel or the owners, their servants, agents⁷³ or contractors’*.⁷⁴

The expression *‘irrespective of whether there has been any negligence or default’* implies strict liability for the shipowner, since the terminal is to be indemnified for any loss regardless of fault by the shipowner or its servants. Strict liability constitutes a marked deviation from ordinary Norwegian law of damages, where the starting point is that negligence is a prerequisite of liability.

Other CoU may contain less explicit formulations, like *‘howsoever and by whomsoever caused’*,⁷⁵ but these expressions should also be interpreted to imply strict liability. Moreover, *‘howsoever caused’* also implies that it is irrelevant whether liability is incurred in contract or in tort,⁷⁶ and the same interpretation must also apply to the other contracts as a consequence of their structure.

The Punta Europa Conditions open up for the possibility of liability on the part of the terminal in one instance, namely in respect of LPG vessels where *‘Losses arise as a direct result of the sole fault of the Company Indemnity Group.’*⁷⁷ This is an exception to the

⁷³ The vessel’s agent is the local company which renders assistance to the vessel in port, inter alia in relation to port entry, provisions, bunkers and repatriation (*Falkanger/Bull/Brautaset*, p. 155). Thus, the agent is one of the shipowner’s servants.

⁷⁴ Qalhat Clause 1 (c), Bonny Clause 5.1 4th subparagraph, Braefoot Bay Section A (a) (ii). *‘Conditions binding upon all users of Port Rashid Dubai’* Clause c) also falls into this category but has a different wording.

⁷⁵ Sharjah Clause 3 a)

⁷⁶ *Bull*, p. 362

⁷⁷ Clause 2.1 (b) (ii)

general rule of strict liability, and at the same time an exception to the rule of liability without causation, discussed further in 6.2.3 below.

A minority of the contracts stipulate ordinary negligence-based liability. The Ras Laffan, Altamira and Hazira Conditions, which are approved by the P&I insurers,⁷⁸ state that the shipowner is liable for any loss suffered by the terminal or third parties '*which involves the fault, wholly or partially, of the Master, officers or crew [...], including negligent navigation*'.⁷⁹

This brings us to the question of vicarious liability under the CoU. All the contracts hold the shipowner vicariously liable to some extent. In the indemnity clauses the shipowner is identified with either i) the faults of its servants⁸⁰ or ii) the faults of its servants *as well as* the faults of the terminal and the terminal's servants.⁸¹

As regards i), this is in line with Norwegian law in the sense that the shipowner is vicariously liable for the faults of its servants. However, it is also possible to imagine a situation where the terminal's servants may inflict damage to the terminal's interests '*in the service of the ship*', for which the shipowner would be liable under Norwegian law. In this respect, the scope of vicarious liability under these contracts is actually more limited than what follows from NMC § 151.

The narrowest scope of vicarious liability is found in the three P&I-approved contracts, which merely require indemnification for faults by the vessel's own personnel and make no reference to negligence neither by the shipowner's other servants, agents and contractors nor by the terminal's servants.

⁷⁸ Cf. 7.2.2 below

⁷⁹ Ras Laffan Clause 6 (i), Altamira Clause 5 a) and Hazira Clause 2.8

⁸⁰ Qalhat Clause 1 (c), Bonny Clause 5.1 4th subparagraph, Braefoot Bay Section A (a) (ii), Kuwait Clause 4, Ras Laffan Clause 6 (i) and (ii), Altamira Clause 5 a) and b) and Hazira Clause 2.8 a) and b)

⁸¹ Abu Dhabi Clause 4, Escravos Clauses 5 – 6 and Kharg Clause 4, Sharjah Clause 2, Port Rashid '*Port and Customs Dept.: Conditions of use of any premises...*' and '*Conditions binding upon all users of Port Rashid Dubai*' Clause c)

As regards ii), whether the shipowner would also be liable for the faults of the terminal's servants under Norwegian law depends on whether they were working *in the service of the ship*. If not, such liability would be a departure from ordinary law, and the mere possibility in this case opens for a wider scope of liability. Notably, an indemnification of the terminal's faults would work as a disclaimer if the clause also included shipowner losses.

Punta Europa's exemption for the sole fault of the terminal would imply a departure from Norwegian law if the servants of the shipowner and terminal caused a loss together, for which the shipowner must bear the full liability.

6.2.3 Causation

The second requirement for compensation under Norwegian law is that there is a causal link between the damage and the injurious act. The basis of causation is the *but for* test: A is the cause of B if A is a necessary prerequisite of B's occurrence.⁸² Causation is a requirement both in contract and tort.

A closer examination of the Conditions of Use shows that the requirement for a causal link is either limited or non-existent. This has found somewhat different expressions in the contracts, and the same contract may use several expressions. However, where causation is mentioned, it is generally somehow related to '*the use*' of the port or terminal.

The Sharjah Conditions use the expression '*during*' in relation to pilotage, whereby the port '*accepts no responsibility for any damage occurring during berthing or unberthing*'.⁸³ The object of potential damage is not specified, but it is likely that this clause is intended to

⁸² Lødrup, pp. 254 et seq.

⁸³ Clause 1

exclude liability for damage to both terminal and shipowner interests. The expression ‘*during*’ is also found in the Port Rashid Conditions.⁸⁴

The expression ‘*during*’ has been interpreted under English law in *The Polyduke* case. The below clause was described by the court as ‘*a far-reaching indemnity in favour of the plaintiffs*’ (the terminal):

*‘If during, or by reason of the use by the vessel of the berths or other facilities [...] any of them shall be damaged from whatsoever cause arising and notwithstanding that such damage be contributed to or by the negligence of the Company or its servant [sic] the vessel and her Owners shall hold the Company harmless and indemnified against all such loss or damage...’.*⁸⁵

Prima facie, the expression ‘*during*’ is much wider than ‘*in connection with*’. There is no requirement for causation, only a limitation in time, whereas ‘*in connection with*’ indicates a more functional approach. Furthermore, the connector ‘or’ indicates that the damage may take place *either* during the vessel’s stay *or* as a consequence of the vessel’s use of the premises.

The owner of the “Polyduke” pointed out that the word ‘*during*’ was not found in any other similar contracts, contending that this wording would lead to unreasonable risks, effectively placing the shipowner in the position of the terminal’s insurers and even making it liable for damage by exceptional tidal waves. The court conceded that the word ‘*during*’ could imply a more extreme meaning, but nevertheless held that this was not probable because no sensible court would construe the clause in such a manner since this would lead to an absurd result that none of the parties could have intended. Interestingly, the court added

⁸⁴ ‘*Port and Customs Dept.: Conditions of use of any premises...*’. This is primarily a disclaimer clause, but works as an indemnity inter alia where it disclaims liability damage to the terminal’s own property.

⁸⁵ Clause 2 (d)

that in the context, the word ‘*during*’ must connote ‘*in connection with*’, which ‘*would bring the clause—however harsh and one-sided—in line with many similar provisions*’.⁸⁶

Thus, under English law ‘*during*’ is interpreted to connote ‘*in connection with*’, the latter of which is frequently found in the CoU.⁸⁷ *The Polyduke* decision implies a restrictive interpretation of the word ‘*during*’, and this indemnity clause was upheld by the court.⁸⁸

The wording ‘*in connection with*’ implies that the causal requirement is very weak, thus opening for a wide range of circumstances. There is no requirement for causation in the traditional sense; instead a natural and reasonable connection between the damage or loss and the vessel’s use of the terminal will suffice.⁸⁹

Moreover, the triggering element is very comprehensive, insofar as it is satisfactory that the damage or loss has occurred in connection with ‘*the [vessel’s] use*’. Since in most of these contracts liability occurs regardless of fault on the part of the shipowner, the expression also clearly implies damage caused by third parties. Any act or omission reasonably connected with ‘*the use*’ is included.⁹⁰

Any temporal limitations within this expression are more or less given; if the damage occurs during the vessel’s arrival, stay or departure, such limitations are satisfied.

The expression ‘*arising out of or in connection with the use*’ is found in the Punta Europa Conditions.⁹¹ ‘*Arising out of*’ is narrower, suggesting an element of causation between the damage and the vessel’s presence. However, since the expression is followed by the

⁸⁶ p. 216

⁸⁷ Bonny Clause 5.1 4th subparagraph, Braefoot Bay Section A (a) (ii) and Qalhat Clause 1 (c)

⁸⁸ 6.4 below discusses the possibility of setting aside or adjusting such liability clauses under Norwegian law.

⁸⁹ *Bull*, p. 385

⁹⁰ *Bull*, p. 386

⁹¹ Clause 2.1 (a)

wording '*in connection with*' as well as a disclaimer of negligence on the part of the terminal, it is clear that all liability is nevertheless meant to lie with the shipowner.⁹²

Another usual expression is '*in connection with or by reason of the use*'.⁹³ '*By reason of*' is more limited than '*in connection with*' and, similarly to '*arising out of*', suggests an element of causation, but even more so. When damage occurs '*by reason of the use*' the vessel's mere presence is not enough to trigger liability; the expression suggests some causal activity on the vessel's side.

The Port Rashid Conditions use the expression '*directly or indirectly attributable to*',⁹⁴ which in my opinion equals '*by reason of the use*'. However, since these expressions never occur alone but are always accompanied by '*in connection with*', this legal distinction does not have any practical effect.

The Port Rashid Conditions also contain several other, seemingly redundant causal expressions. While in one place there is a requirement for causation by the shipowner, stating that the user shall be liable for '*any loss or damage directly or indirectly caused by them or their servants*',⁹⁵ this requirement is neutralised by another provision in the same contract which makes the shipowner liable '*from what-so-ever cause*'.⁹⁶ Still, the aggregate effect is that the terminal will be held harmless in any case.

More interestingly, the same contract opens up for liability on behalf of the port in relation to tug damage if '*caused by want of reasonable care on the part of the Port to make its tugs seaworthy for the navigation of the tugs during the towing or their services*'.⁹⁷ However, '*the burden of proving any failure to exercise such reasonable care*' lies with the

⁹² Bull, p. 386

⁹³ Escravos Clause 5, Kharg Clause 4, Kuwait Clause 4 and Abu Dhabi Clause 4

⁹⁴ '*Port and Customs Dept.: Conditions of use of any premises...*'

⁹⁵ '*Conditions binding upon all users of Port Rashid Dubai*' Clause c)

⁹⁶ '*Port and Customs Dept.: Conditions of use of any premises...*'

⁹⁷ '*Conditions of tug hire*' Clause 2 2nd subparagraph

shipowner, and this reversed burden creates a more stringent form of liability than the ordinary negligence-based one.⁹⁸

Also the Sharjah Conditions are unclear at one point. The shipowner and/or charterer are to be held liable '*[i]n the event of any accident occurring, howsoever caused, which involves port stevedores*' or others during cargo operations or shifting/hauling.⁹⁹ It is not clear from the context whether the accident is *inflicted onto* the stevedores or *caused by* them, and thus the shipowner should be prepared for both interpretations.

Generally, it appears that as long as the loss or damage is in any way related to the vessel, the shipowner is liable even though other causes have contributed or the damage appears to be an unforeseeable consequence of the vessel's actions. Simply put, the shipowner is liable even if external circumstances like the weather or other injurious parties like the terminal or third parties have contributed.

Nevertheless, in the Ras Laffan, Hazira and Altamira Conditions liability is negligence-based,¹⁰⁰ and these contracts do not use the expression '*in connection with the use*'. Admittedly, the Ras Laffan and Altamira Conditions use the wording '*related to the vessel's use*'¹⁰¹ but supply it with a requirement for negligence. Thus, in this respect these three contracts follow the Norwegian rules on compensation; i.e. the shipowner is liable for damage caused by fault or neglect in accordance with ordinary principles of causation.

As mentioned in 6.2.2, Punta Europa exempts the shipowner from liability in one instance, namely where the losses are caused exclusively by the terminal. This constitutes an exception from the general liability regardless of causation. The shipowner is still liable for damage caused by its servants as well as for damage caused together with another party, either the terminal or a third party, but not for damage caused by the terminal alone.

⁹⁸ This clause is working both as an indemnity and disclaimer and is thus also discussed in 6.3.2 below

⁹⁹ Clause 3 b)

¹⁰⁰ Cf. 6.2.2 above

¹⁰¹ Clauses 6 (i) and 5 (b), respectively

6.2.4 Indemnified parties. Losses covered

This section firstly presents the indemnified parties and secondly examines what losses are covered by the indemnification.

In the contracts '*the Company*', i.e. the terminal's owner/operator, is the object of indemnification. The owner/operator is typically one or several large petroleum companies, which are either private or state-owned. Exceptions are the Sharjah and Port Rashid Conditions where the contractual partner is the public port authorities. In the Hazira Conditions the contractual partner also appears to be the port, but in the form of a privatised company called '*Hazira Port Private Limited*'.¹⁰² Sometimes associated companies, etc. are also included in the indemnification. Inter alia the Punta Europa Conditions specify several layers of corporate entities on the terminal side,¹⁰³ all of which are to be indemnified.¹⁰⁴

As regards losses covered, the third prerequisite for compensation under Norwegian law is that there is a real and measurable economic loss. When basis of liability has been established, the starting point under Norwegian law is that the injured party is entitled to have all its losses covered, although contributory negligence by the injured party may reduce compensation.¹⁰⁵ Losses covered are often divided into direct losses, extraordinary expenses and consequential losses. Moreover, the principle of foreseeability limits recovery of losses with respect to adequate causation and foreseeability of loss. Thus, there is a close connection between causation and losses covered.

¹⁰² Clause 2. 4th subparagraph

¹⁰³ Clause 1 stipulates that '*Company Group*' consists of a large number of listed international petroleum companies, which again form part of a '*Company Indemnity Group*', including the group's affiliates, contractors and sub-contractors as well as their respective employees.

¹⁰⁴ Clause 2.1

¹⁰⁵ Torts Act § 5-1

The starting point under the CoU is that all losses are to be indemnified irrespective of foreseeability and size. The Punta Europa Conditions define losses as follows: “*“Losses” means any claims, actions, demands, losses, liabilities, damages, costs and/or expenses (including legal fees on a full indemnity basis and sums by way of settlement or compromise) of whatever nature*’.¹⁰⁶

Types of loss to be indemnified fall into three main categories, namely i) loss and damage to port/terminal interests, ii) third party liabilities and iii) expenses related to pollution and wreck removal.

As regards category i), indemnification of terminal interests comprises any loss or damage to the terminal’s property as well as ‘*injury or death to any person employed on the premises*’.¹⁰⁷ It is clear that all types of claim arising from such damage and loss are covered.

The Sharjah Conditions specifically mention indemnification of consequential damage.¹⁰⁸ Any consequential damage whatsoever is to be indemnified, which may include losses both in production and profits. Also the Port Rashid Conditions mention consequential losses in one instance, namely in relation to the use of tugs.¹⁰⁹ Nevertheless, in my opinion consequential losses are also covered under the other contracts by the wording ‘*any loss*’, which should be interpreted to mean both direct and consequential losses. The same line of reasoning applies to delay, which is specifically mentioned in the Escravos Conditions.¹¹⁰

Consequential losses are as a starting point considered sufficiently foreseeable under Norwegian law,¹¹¹ which makes these provisions in line with ordinary legal principles.

¹⁰⁶ Clause 1 5th subparagraph

¹⁰⁷ Bonny Clause 5.1 4th subparagraph, Braefoot Bay Section A (a) (ii) and Qalhat Clause 1 (c)

¹⁰⁸ Clause 2

¹⁰⁹ ‘*Conditions of tug hire*’ Clause 2

¹¹⁰ Clause 6 b)

¹¹¹ *Falkanger/Bull/Brautaset*, p. 287

Case law supports that loss of profits are generally recoverable.¹¹² However, the requirement for causation must be satisfied, and the more indirect a loss is, the less likely it is to be recoverable. Since the requirement for causation is limited under these contracts, their liability for consequential losses may well exceed what would be recoverable under Norwegian law.

As regards category ii), the terminal may require indemnification in two different instances, either from damage imposed by the terminal to third parties, or from damage caused by the shipowner to third parties where the terminal and shipowner are held jointly and severally liable.

All the Conditions except Punta Europa require indemnification of third party liabilities to some extent.

The Escravos Conditions are the most comprehensive and require both types of third party indemnification. Firstly, the terminal is to be held harmless from any damage or injury caused by the vessel to any third party,¹¹³ which applies if the terminal is held jointly and severally liable with the shipowner. Secondly, the terminal requires indemnification from *'all and any action, liabilities, claims, damages, cost, awards and expenses arising whether directly or indirectly out of any loss, damage, personal injury, including death, or delay, of whatsoever nature, occasioned to any third party or any vessel (her Owners and crew)'* whether or not caused by the terminal or its servants.¹¹⁴ This implies an indemnification of damages caused by the terminal.

The far-reaching disclaimer by Port Rashid requires indemnification of damage to *'other vessels and or cargo and or other property ashore or afloat or fixed or movable and loss of life of and or personal injury to any person or persons what-so-ever, and or any legal*

¹¹² Rt. 1987.1649 NSC Ny Dolsøy, which concerned an interpretation of the standardised loss rule in the NMC (current § 279).

¹¹³ Clause 5

¹¹⁴ Clause 6 a)

liability’ regardless of own fault¹¹⁵ and thereby includes any third party damage regardless of who caused it. The contract also requires indemnification of tug damage to third parties, but only related to claims for personal injury and loss of life.¹¹⁶

The third party indemnification in Sharjah appears to be slightly narrower, since the only third party objects mentioned are ‘*other vessels and craft*’.¹¹⁷ Theoretically, there may be other third party damage which is not covered. On the other hand, such indemnification includes both damage by vessel and tugs.

However, the majority of the Conditions only require indemnification of ‘*all and any claim, damages, costs and expenses arising out of any loss, injury, death or damage caused to any third party by the Vessel*’,¹¹⁸ i.e. indemnification from the shipowner’s liability if the terminal is held jointly and severally liable. Under Norwegian law, if there is joint and several liability the injured party may claim the entire compensation from either party,¹¹⁹ with a subsequent redistribution between shipowner and terminal in recourse. Thus, if the entire loss is channelled directly to the shipowner, this is a deviation from ordinary background law.

The Punta Europa Conditions do not mention third parties, except from stipulating that the terminal’s associates shall obtain third party rights under the English Contracts (Rights of Third Parties) Act 1999.¹²⁰ Thus, if third party damage occurs in connection with this contractual relationship, there is an actual possibility that the loss will lie where it falls, which is in accordance with traditional contract law.

¹¹⁵ ‘*Port and Customs Dept.: Conditions of use of any premises...*’

¹¹⁶ ‘*Conditions of tug hire*’ Clause 2

¹¹⁷ Sharjah Clause 2

¹¹⁸ Qalhat Clause 1 d), Kuwait Clause 4, Bonny Clause 5.1 5th subparagraph, Braefoot Bay Section A, (a) (ii), Kharg Clause 4 2nd subparagraph, Abu Dhabi Clause 4, Ras Laffan Clause 6 (ii), Altamira Clause 5 b) and Hazira Clause 2.8 d)

¹¹⁹ Torts Act § 5-3,1

¹²⁰ Clause 1 (a) gives a third party the right to enforce a contractual term ‘*if the contract expressly provides that he may*’.

The last category iii) comprises expenses related to wreck removal and pollution.

As a starting point, liability for wreck removal may be either statutory or contractual.¹²¹ Under Norwegian law, public authorities may instruct the shipowner to remove a wreck within certain time limits,¹²² but if the matter is urgent and the shipowner does not comply or there is not sufficient time to give notice, the authorities may remove the wreck themselves.¹²³ Furthermore, the shipowner's non-compliance with notice of wreck removal is a criminal offence, punishable by fines.¹²⁴

The majority of the CoU contain specific wreck removal clauses, and the wording is almost identical in all contracts: *'If any vessel sinks, grounds, or otherwise becomes in the opinion of the Company an obstruction or danger [...] and the owner of the vessel fails to remove [it] within a period stipulated by the Company, the Company shall be empowered to take any steps it may deem necessary to remove the obstruction or danger. Any expenses of such removal shall be recoverable from the owner of the vessel.'*¹²⁵ This liability presupposes prior notification of the shipowner, which is thus less far-reaching than Norwegian legislation.

However, the Kharg and Abu Dhabi Conditions have stricter wreck removal provisions than the others. The former stipulate that the wreck may at any time be blown up or otherwise destroyed at the shipowner's expense,¹²⁶ and the latter states that the shipowner is not automatically entitled to notification before wreck removal, and if notified, non-compliance with instructions of wreck removal is a criminal offence.¹²⁷ Thus, these provisions are in line with Norwegian legislation.

¹²¹ *Falkanger/Bull/Brautaset*, p. 184

¹²² The Harbour Act of 8 June 1984 (No. 51) § 18 3rd subparagraph

¹²³ The Harbour Act § 20

¹²⁴ The Harbour Act § 28 b.

¹²⁵ Punta Europa Section 'Assistance, Advice or Instruction' 3rd subparagraph cf. Kuwait Clause 5, Braefoot Bay Section A (a) Clause (iv), Ras Laffan Clause 7, Altamira Clause 6 cf. Clause 5 (c), Hazira Clause 2.9 and Bonny Clause 5.1 6th subparagraph

¹²⁶ Clause 6 (a) and (b)

¹²⁷ Clauses 5 and 6

The Escravos, Port Rashid, Qalhat and Sharjah Conditions contain no mention of wreck removal. However, it should be noted that their general indemnity clauses cover any damage and loss, and should thus be assumed to cover wreck removal on such basis.

As regards pollution, liability for environmental damage is statutory in most shipping nations, which have ratified conventions or passed national legislation in order to prevent pollution incidents, effectively manage such incidents and ensure that the damage and necessary measures are aptly compensated for.¹²⁸

The MARPOL 1973/78 Convention identifies five main marine pollutants: i) oil, ii) liquid substances in bulk (e.g. gases and chemicals), iii) harmful substances in packaged form, iv) sewage and v) garbage. The IMO¹²⁹ has also recently approved conventions regulating pollution from ballast water and anti-fouling¹³⁰ systems.

Approximately half of the examined CoU specifically require indemnification from pollution from the vessel.¹³¹ In Norway the main legislation on pollution is the Pollution Act of 13 March 1981 (No. 6), which stipulates that a person is strictly liable for pollution,¹³² and thus these provisions are in line with ordinary legal principles.

The Kharg Conditions contain an indemnity provision exclusively against *oil pollution*, comprising pollution from the terminal's loading arms, which is normally the terminal's responsibility according to standard risk allocation in the trade. The provision requires indemnification of damages including full cost of preventive measures to avoid fire hazards

¹²⁸ *Falkanger/Bull/Brautaset*, p. 195

¹²⁹ The International Maritime Organization is the United Nations specialised agency for the safety and security in shipping and prevention of marine pollution by ships (URL: www.imo.org)

¹³⁰ A type of paint which prevents growth on the ship's underwater surfaces

¹³¹ Inter alia Escravos Clause 6 b) and Punta Europa Clause 2.1 (a) (ii)

¹³² § 55,1

as well as any clean-up costs, and '*such cost shall constitute a debt payable by the vessel or her Owners to the Company.*'¹³³

NMC Chapter 10 regulates oil pollution from ships under Norwegian law. The applicable legal provision for non-oil tankers is NMC § 208, which makes the shipowner strictly liable for oil pollution and preventive measures, cf. § 191.

Thus, with respect to oil pollution the Kharg Conditions are in line with Norwegian law. However, despite the extended physical area of application, this provision is more limited than the legislation with regard to scope of pollutants.

The Kuwait Conditions require indemnification for pollution to the environment including the territorial waters of Kuwait.¹³⁴ This inclusion of the territorial waters is actually less stringent than Norwegian legislation, which imposes liability for pollution on the Norwegian part of the continental shelf.¹³⁵

The Sharjah Conditions stipulate that '*any kind of pollution is strictly prohibited*'.¹³⁶ The master, shipowner, charterer and/or operator are jointly and severally liable to a fine up to Dhs 500,000 in addition to any other expenses incurred towards removal, clean-up and potential third party damage. The fine is not an indemnity since it applies regardless of actual costs incurred, but it will also work towards paying off the shipowner's pollution liability.

Along the same lines of reasoning as for wreck removal, it must be assumed that pollution is covered under the general indemnity clauses in the contracts where it is not specifically regulated.

¹³³ Clause 5

¹³⁴ Clause 4

¹³⁵ Cf. NMC § 208,1

¹³⁶ Clause 10

6.2.5 Limitation of liability

The starting point under Norwegian law of damages is that liability is unlimited when the conditions for compensation have been met.

However, in maritime law there is a strong tradition for limiting the shipowner's liability, and Norway has ratified international convention-based limitation regimes. These rules, being an exception to the general rule of unlimited liability, give the shipowner a *right* of limitation.

The rules concerning the shipowner's right of limitation are found in the NMC. Chapter 9 contains the global limitation rules, Chapter 10 contains the oil pollution limitation rules, Chapter 12 contains rules on limitation funds and proceedings and Chapter 13 regulates the carrier's right to limit its liability. Limitation of liability for oil pollution from non-tankers is regulated by the global limitation rules.¹³⁷

The CoU do not discuss the relationship between the contractual liability and the international limitation regime. The general rule under these contracts is that the size of the claim is irrelevant, and there is unlimited liability for the shipowner¹³⁸ and sometimes also for the charterer and/or master.

As a starting point the shipowner's statutory right of limitation applies also to contractual liabilities. On the other hand, the global limitation rules are not compulsory in favour of the shipowner: NMC § 171 merely states that the shipowner *can* limit its liability under Chapter 9. Thus, it is quite clear that the shipowner is entitled to waive such rights towards a contractual party.¹³⁹ Consequently, in legal proceedings the court would have to examine whether the signed contract evidences an explicit waiver of such rights, and if this

¹³⁷ NMC § 208,3 cf. Chapter 9

¹³⁸ '*...the vessel and the Owners shall hold The Company [...] and affiliates, harmless from and indemnified without limitation...*' (Escravos Clause 4)

¹³⁹ Bull, p. 375

requirement for a waiver is not found to be satisfied, then the shipowner's right must be upheld.¹⁴⁰

As regards the shipowner's liability for wreck removal, the starting point under Norwegian law is that it may be limited under the global limitation regime,¹⁴¹ and it is not a precondition for limitation that the liability is based in statute.¹⁴² In the context of gas carriers, the right of limitation for expenses related to removal of dangerous cargo may also arise¹⁴³ as well as measures to avert associated losses.¹⁴⁴ Consequently, the unlimited liability for wreck removal arising from the CoU is not in line with Norwegian law, and in legal proceedings the court would have to consider whether the shipowner has explicitly waived its right of limitation.

It should be noted that the three P&I-approved CoU contain liability limitations, and the limitation amount is set to USD 150 million.¹⁴⁵ Moreover, the Punta Europa Conditions stipulate a limit of USD 50 million for LPG vessels only '*or such higher amount as is available by way of insurance coverage from a recognised P&I club*'.¹⁴⁶ Notably, the Punta Europa Conditions, as the only ones in the selection, specifically require the shipowner to have proper P&I insurance in place,¹⁴⁷ but are not approved.¹⁴⁸

6.3 The terminal's disclaiming of liability for shipowner interests

The CoU contain far-reaching disclaimers on the part of the terminal concerning liability for shipowner interests. Disclaimer clauses are widespread in international contract law,

¹⁴⁰ Bull, p. 376

¹⁴¹ NMC § 172a 1)

¹⁴² Falkanger/Bull/Brautaset, p. 184

¹⁴³ NMC § 172a 2)

¹⁴⁴ NMC § 172a 3)

¹⁴⁵ Ras Laffan Clause 11, Altamira Clause 10 and Hazira Clause 2.10. Note: The Altamira Conditions Clause 11 establishes that such limitation of liability shall not prejudice any claim by the Company under general principles of law or equity.

¹⁴⁶ Clause 2.1 (b) (i)

¹⁴⁷ Clause 2.4

¹⁴⁸ Cf. 7.2.2 below

and they operate to the effect as to disclaim some or all liability of one of the parties. Far-reaching disclaimer clauses on behalf of one contractual party suggest that the contract is biased in favour of that party.

This section will discuss the practical solutions in the contracts with respect to the terminal's disclaiming of liability for shipowner interests. In 6.3.1 the various forms of disclaimed liability will be outlined, whereas 6.3.2 analyses the importance of fault. 6.3.3 presents the different areas covered by the disclaimers and 6.3.4 examines disclaimed losses.

6.3.1 Forms of disclaimed liability

In the CoU liability is disclaimed on behalf of i) the terminal owner/operator and associates, ii) public bodies and iii) employees and contractors including pilots and tugs.

As regards i), when the terminal disclaims liability on behalf of itself and associated companies it disclaims direct liability (as opposed to vicarious liability for servants). Gross negligence and intent are not exempted from the disclaimers, and thus it must be assumed that the terminal disclaims all degrees of fault.¹⁴⁹

The terminals always disclaim their own direct liability, and the majority also disclaim direct liability on behalf of associated companies.

However, whose liability is disclaimed may vary along with what areas the disclaimers apply to. The Punta Europa Conditions serve as a good example: With regard to navigational assistance, the terminal, any associated company, any other owner of property used at the terminal as well as its agents and servants (in whatever capacity they may be acting) all disclaim liability.¹⁵⁰ With respect to the general safety of the port, only the

¹⁴⁹ Cf. 6.3.2 below

¹⁵⁰ 'Assistance, Advice or Instruction' 1st subparagraph

Company disclaims liability,¹⁵¹ and concerning liability for vessel, crew and cargo, the entire Company Indemnity Group disclaims liability.¹⁵²

In the Sharjah, Port Rashid and Hazira Conditions the contractual partner disclaiming liability is not the terminal, but the port.¹⁵³ The Port Rashid Conditions firstly disclaim liability on the part of the entire '*Government of Dubai and those acting under its authority*' for any liability occurring at the premises.¹⁵⁴ Secondly, '*neither the Government of His Highness the Emir of Dubai nor the Port Operators appointed thereby nor their [sic] nor either of their servants or agents*' is liable for any losses whatsoever.¹⁵⁵

As regards ii), some of the terminals disclaim liability on behalf of public bodies. In such case the public bodies are third parties to the contract,¹⁵⁶ and the disclaimers apply on their behalf. Contractual parties may freely allocate third party liabilities arising from ordinary principles of torts and damages.¹⁵⁷ Such third party disclaimers must be distinguished from the disclaiming of *vicarious liability* in the Sharjah and Port Rashid Conditions, where the public authorities *are* the contractual partners, thus disclaiming faults on behalf of their servants and contractors.¹⁵⁸

In relation to pilots and tugs, the terminals disclaim liability in either of two ways, either i) vicarious liability for their faults as contractors, which would be the case under Norwegian law, or ii) on behalf of the pilot/tug as a third party. In the latter case, the shipowner promises not to hold the pilot/tug responsible for damage, which serves as third party promise under the contract. Thus, the terminal is the party issuing the disclaimer, but the disclaimer also applies on behalf of the pilot and/or tug.

¹⁵¹ '*Use of Sea berths, Loading Lines, Facilities, Gear and Equipment*' 2nd subparagraph

¹⁵² Clause 2.2. Cf. footnote 97

¹⁵³ Cf. 6.2.4 above

¹⁵⁴ Port and Customs Dept.: '*Conditions of use of any premises...*'

¹⁵⁵ '*Conditions binding upon all users of Port Rashid Dubai*' Clause a)

¹⁵⁶ Cf. Qalhat Clause 1 (f), which disclaims liability on behalf of the Government of Oman. Cf. also Braefoot Bay Section A Clause (v), which disclaim liability for any delay caused by the faults of the port and its vessel traffic services

¹⁵⁷ Cf. 6.1 above

¹⁵⁸ Sharjah Clause 3 c) and '*Conditions binding upon all users of Port Rashid Dubai*' Clause b)

As regards iii), all contracts disclaim vicarious liability for the faults of any and all persons working for the terminal or the port, including servants, agents and contractors.¹⁵⁹ The CoU do not contain exhaustive lists of servants, but they all mention the faults of pilots, tugs and other navigational services.¹⁶⁰ Typically, the faults of pilots, tugs and mooring personnel are disclaimed in relation to port safety and navigational services, whereas the disclaimers concerning damage caused by the terminal more generally exclude the faults of *'any servant, agent or contractor'*.¹⁶¹

Also the P&I-approved contracts disclaim liability for the faults of servants. For instance Altamira disclaims the faults of the *'Company Representatives'*,¹⁶² who are defined as *'any director, officer, employee, contractor, servant, consultant, advisor, agent or representative of the Company in whatever capacity they may be acting'*.¹⁶³

Such disclaiming of vicarious liability on behalf of employees and contractors is not in accordance with Norwegian law. The starting point under the law of damages is that a legal person is directly liable in negligence as well as vicariously liable for the faults of its servants.¹⁶⁴

6.3.2 The fault element

The majority of the terminals disclaim all and any liability regardless of fault on the part of themselves or their servants. Excluded faults are typically *'any act, neglect, omission or*

¹⁵⁹ Inter alia Escravos Clauses 2 – 3 and Abu Dhabi Clause 1 (b)

¹⁶⁰ Escravos, Punta Europa, Hazira and Port Rashid disclaim liability for pilotage, tugs, berthing services and other navigational facilities by stating that the pilots, loading masters and crews of pilot and mooring boats, etc. become the servants of the vessel's master for the duration of the operation. Cf. Sharjah Clause 1, where the pilot's advice *'shall not under any circumstance exonerate the Master and Owners from liability'*.

¹⁶¹ Inter alia Bonny Clause 5.1 3rd subparagraph, Escravos Clause 3 and Qalhat Clause 1 (b)

¹⁶² Clauses 3 – 4

¹⁶³ *'Conditions of Use'* 4th subsection

¹⁶⁴ Torts Act § 2-1 and ordinary background law

default'.¹⁶⁵ This must be understood to include ordinary negligence, gross negligence and intent.

The starting point under Norwegian law of damages is that a person can disclaim liability for the faults of others as well as for its own ordinary negligence, but not for its own intent. It is debatable whether liability for a person's own gross negligence can be disclaimed.¹⁶⁶

All CoU expressly state that the terminal disclaims liability irrespective of fault or neglect.¹⁶⁷ This express statement may be a reaction to the fact that some jurisdictions have refused to accept disclaimers of negligence-based liability without an express statement to that effect.¹⁶⁸ In addition to personal fault, the Escravos Conditions also disclaim liability for property fault, i.e. the '*fault or defect in any berth, premises, facilities, property, gear, craft, or equipment of any sort*'.¹⁶⁹

However, the Port Rashid Conditions exempt an element of fault from the disclaimer on behalf of the tugs. The port specifically disclaims liability for unseaworthiness in relation to the tugs, provided that '*such liability [...] is not caused by want of reasonable care on the part of the Port to make its tugs seaworthy for the navigation of the tugs during the towing or their services. The burden of proving any failure to exercise such reasonable care, shall lie on the Owner of the tow*'.¹⁷⁰ This implies firstly, that unseaworthiness as a starting point is disclaimed, secondly, that the port may be liable for damage caused by the tugs if it has not exercised reasonable care in ensuring seaworthiness, and thirdly, that the

¹⁶⁵ Inter alia Kuwait, Kharg and Abu Dhabi Clause 2

¹⁶⁶ *Hagstrøm*: Om grensene for ansvarsfraskrivelse, særlig i næringsforhold, TFR-1996-421, pp. 426 and 448 et seq., *Kaasen*: Petroleumskontrakter med kommentarer til NF 05 og NTK 05 (2006), pp. 601 et seq. and *Bull*, p. 394. Cf. also 6.4 below

¹⁶⁷ Inter alia Kharg Clause 2: '*...whether or not it is due in whole or in part to any act, neglect omission or default...*'

¹⁶⁸ *Bull*, p. 392. Cf. also 6.4 below

¹⁶⁹ Clause 3

¹⁷⁰ Clause 2 2nd subparagraph

burden of proving such lack of reasonable care is reversed, i.e. it lies with the shipowner, thus creating a more stringent form of liability than the ordinary negligence-based one.¹⁷¹

The disclaiming of liability finds a parallel in the indemnity provisions, in the sense that all types of fault are to be indemnified. The three P&I-approved contracts state that indemnity shall be negligence-based on the part of the vessel's personnel, but this includes all types of negligence, also ordinary negligence.¹⁷²

6.3.3 Areas covered by the disclaimers

The disclaimers comprise several areas: navigational services, general safety of the port and safety and suitability of berth and terminal premises.

Disclaimers of liability for shipowner interests will typically be divided between navigational services, like pilots, tugs, buoys and markings on the one hand, and terminal services on the other hand.

Furthermore, the majority of the contracts contain separate disclaimers concerning port safety, whereby liability for the safety and suitability of the premises is disclaimed. These clauses are usually expressed to the effect that no *warranty* is given. No warranty means that there is no guarantee of performance or fulfilment, and thus 'no warranty' implies no liability.

The Escravos Conditions serve as an example: *'While The Company exercises due care to ensure that the berths [...] are safe and suitable for vessels permitted or invited to use them, no guarantee, express or limited, of such safety and suitability is given'*.¹⁷³

¹⁷¹ Cf. 6.2.3 above

¹⁷² Inter alia Ras Laffan Clause 6: *'...which involves the fault, wholly or partially, of the Master, officers or crew, including negligent navigation'*

¹⁷³ Clause 3. Punta Europa, Abu Dhabi, Kharg and Kuwait are almost identical in their wording

Another version of the warranty exclusion is found in the Hazira Conditions: '*Company [...] does not represent or warrant that the Port and Port Facilities are safe or suitable for any vessel.*'¹⁷⁴ In relation to port safety, the Hazira Conditions also disclaim liability '*irrespective of whether or not the vessel is within the notified limits of the Port*'.¹⁷⁵

In contrast to the terminals' own warranty disclaimers, some contracts require a suitability warranty from the shipowner on behalf of the vessel.¹⁷⁶

6.3.4 Disclaimed losses

The contracts stipulate a wide range of losses disclaimed by the terminal. The main types are loss, damage, delay, personal injury, loss of life and any actions by third parties.¹⁷⁷

All CoU disclaim liability for '*any loss, damage or delay*' to vessel, cargo and crew.¹⁷⁸ Port Rashid's disclaimer clause is much more complex and verbose than the others, but does not appear to extend the scope.¹⁷⁹ Actions by third parties are disclaimed either in the form of disclaimers or indemnity clauses.¹⁸⁰

The majority of the CoU also disclaim liability for losses directly or indirectly caused by labour disputes, strikes, etc.¹⁸¹ Hazira's version is particularly wide, comprising '*the consequences of war, riots, civil commotions, acts of terrorism or sabotage, strikes, lockouts, disputes stoppages or labour disturbances [...] or anything done in contemplation or furtherance thereof*'.¹⁸²

¹⁷⁴ Clause 2.3. Altamira Clause 2 contains a similar wording.

¹⁷⁵ Clause 2.2

¹⁷⁶ Inter alia Qalhat Clause 1 1st subparagraph and Abu Dhabi Clause 1

¹⁷⁷ Inter alia Escravos and Kuwait Clause 2

¹⁷⁸ Inter alia Sharjah Clause 3 a) – c), Braefoot Bay Section A (a) Clause (i), Bonny Clause 5.1 4th subparagraph and Port Rashid's '*Port and Customs Dept.: Conditions of use of any premises...*', '*Conditions binding upon all users of Port Rashid Dubai*' Clause a) and '*Conditions of tug hire*' Clause 2

¹⁷⁹ '*Port and Customs Dept.: Conditions of use of any premises...*'

¹⁸⁰ Cf. 6.1 above

¹⁸¹ Cf. inter alia Punta Europa page 4 6th subparagraph, Escravos Clause 4, Kharg Clause 3, Kuwait Clause 3 and Altamira Clause 4

¹⁸² Clause 2.7

The starting point under Norwegian law of damages is that all losses resulting from an injurious act are to be compensated without limitation if sufficiently foreseeable.¹⁸³ Thus, these disclaimers do not follow ordinary legal principles, since the shipowner does not recover its losses. On the other hand, if the loss is unforeseeable, the disclaimers are in line with background law, since the terminal is not liable for unforeseeable consequences in any case. However, the requirement for foreseeability in contract is less stringent towards the injured party than in tort.

Some special provisions are mentioned below:

The Braefoot Bay and Bonny Conditions contain separate clauses concerning claims related to delayed cargo operations. The former contract disclaims liability for ‘*any demurrage, loss claims or demands whatsoever*’ resulting from faults by the port,¹⁸⁴ and the latter disclaims liability for ‘*any costs incurred by a vessel, its Owners [...] as a result of delay to or suspension of loading or discharging or a refusal to load or discharge all or part of a nominated shipment, or a requirement to vacate the jetty arising from Safety Regulations*’.¹⁸⁵

The Abu Dhabi Conditions contain a separate disclaimer concerning any damage claims ‘*for damage allegedly incurred by ships*’ during anchoring and mooring operations.¹⁸⁶

The necessity of these latter provisions is debatable, since the general disclaimers in any case comprise any loss, damage and delay.

¹⁸³ Cf. 6.2.4 above

¹⁸⁴ Section A (a) Clause (v)

¹⁸⁵ Clause 5.1 11th subsection

¹⁸⁶ ‘*Damage Claims*’ page 6

6.4 May the contractual provisions be set aside or adjusted?

As shown above, the CoU deviate from ordinary Norwegian legal principles in several areas by allocating all risk to one party. This section raises the question of whether such liability provisions could be set aside or adjusted by a Norwegian court.

Norwegian law distinguishes between absolute and relative invalidating factors. Absolute invalidating factors are inter alia violations of law or decency (as stipulated in NL 5-1-2¹⁸⁷), insanity, duress, etc. Such factors will render the contract null and void.

However, the Formation of Contracts Act § 36 introduced the relative approach as starting point for setting aside contracts, whereby the parties can choose to affirm. This provision gives Norwegian courts a considerable discretionary measure for setting aside contracts on a case-by-case basis, and these days the courts would probably base such a decision on § 36 rather than on NL 5-1-2, due to the flexibility of the former provision.¹⁸⁸

Excerpt from § 36:

‘An agreement may be overturned wholly or partly or altered insofar as it would be unreasonable or in breach of proper business conduct to invoke it. [...]

*Such decision must emphasise not only on the contents of the agreement, the position of the parties and the circumstances surrounding the formation of the agreement, but also subsequently occurred conditions and the other circumstances...’*¹⁸⁹

The effect of § 36 manifests itself on two levels; either directly, whereby the court relies on the provision to adjust a contract, or indirectly, in applying a test of *reasonableness* without direct reference.¹⁹⁰ Nevertheless, the courts tend to exercise considerable restrictiveness in

¹⁸⁷ ‘Kong Christian Den Femtis Norske Lov’ of 15 April 1687

¹⁸⁸ *Bull*, p. 394

¹⁸⁹ Unofficial translation

¹⁹⁰ *Hagstrøm: Ansvarsfraskrivelse*, p. 459

employing this provision. Moreover, since the provision was not introduced until 1983, jurisprudence from the other Scandinavian countries, which have parallel provisions, must be relied on for interpretation.¹⁹¹

Concerning commercial parties the starting point is that where the distribution of risk is clearly defined in the contract, the court will not interfere due to considerations of equality between negotiating parties and the need for predictability in professional intercourse.¹⁹² Censorship in this area would undermine contractual freedom with its rewards and downfalls.

Although unreasonable risk allocation may in principle cause a provision to be set aside, this is mainly applied to consumer contracts. As of date the Norwegian Supreme Court has never relied on § 36 in a contractual claim between typical commercial parties.¹⁹³ However, there is an earlier obiter statement by the Supreme Court that when a liability disclaimer is very far-reaching, it '*is natural to interpret such a disclaimer restrictively*'.¹⁹⁴ Moreover, the Supreme Court has also stated that it is not doubtful that § 36 also applies to contracts between professional parties.¹⁹⁵ Furthermore, § 36 has been used by the court of arbitration to set aside provisions in shipping contracts on the basis that the provision would otherwise result in economic imbalance between the parties.¹⁹⁶

This section will discuss whether the liability provisions of the CoU could be set aside or adjusted based on either i) monopoly or ii) disclaiming of liability for gross negligence/intent. The former is related to contract formation and the latter to contractual contents.

¹⁹¹ *Hagstrøm: Ansvarsfraskrivelse*, p. 461

¹⁹² Cf. ND 1990.204 NA *the Ula case*, where it was stated that commercial contracts are profit-based and will thus lead the parties to assume calculated risks

¹⁹³ *Woxholth*, p. 367

¹⁹⁴ Rt. 1961.1334, p. 1338 (unofficial translation). The case concerned a disclaimer as basis for the shipowner's recourse. Adjustment based on § 36 is also mentioned obiter in Rt. 1994.626, but the question was not decided on because the injurious party was not part of the company management (*Hagstrøm: Ansvarsfraskrivelse*, p. 422)

¹⁹⁵ Rt. 1999.922 NSC, p. 943

¹⁹⁶ ND 1985.234 NA Mascot

As regards i), monopoly is an example of inequality in the negotiating position between commercial parties. If only one person may provide services, it is considered monopoly. The precondition of choice among several contract partners fails if the party offering services is not competing in a free market but has monopoly and the other person is in a state of dependency.¹⁹⁷ Taking advantage of such dependency is a form of exploitation, which under § 36 is a deficiency in the '*circumstances surrounding the formation of the agreement*'.¹⁹⁸ Exploiting for personal profit the dependency of another may be sufficient grounds for setting aside a contract. Although this theory is originally related to emergency situations, it has been asserted that it also applies to economic interests.¹⁹⁹ The preparatory works of § 36 also state that conditions giving one party unreasonable means of pressuring the other may be subject to censorship.²⁰⁰ Subsequently, if a person's opportunity to choose has been thwarted by monopoly, the contract may be open for adjustment under § 36.

So far Norwegian courts have only set aside consumer cases on grounds of monopoly,²⁰¹ but there are examples of monopoly considerations involving professional parties in other Scandinavian courts. In U 1988.1042 DSC the Danish Supreme Court set aside a distribution contract with 23 years termination period between professional parties on grounds of contractual unreasonableness and imbalance. Furthermore, in U 1986.602 DCA the seller of a property reserved the right to work for the buyers as a long-term future broker of the property, which prevented the buyers from choosing a broker freely. The Court of Appeal decided that the clause was against sound business practice without further grounds.²⁰² Both these decisions are based on a combined consideration of monopoly and unreasonableness.

¹⁹⁷ *Wilhelmsen*: Avtaleloven § 36 og økonomisk effektivitet, TFR-1995-1, p. 103

¹⁹⁸ *Wilhelmsen*, p. 102

¹⁹⁹ Rt. 1994.833 NSC cf. *Wilhelmsen*, p. 104

²⁰⁰ *Woxholth*, p. 360

²⁰¹ Cf. inter alia RG 1991.546 NCA

²⁰² See also NJA 1989.346 SSC and U 1987.801 DSC, where the Danish Supreme Court set aside a contractual provision between two professional parties based on unreasonableness

In the case of the CoU, it may be argued that the terminal is exercising monopoly and thus is exploiting the shipowner's state of dependency since the vessel will be denied access unless the master signs the contract and even if signature is avoided, the contract applies regardless. Moreover, the fact that such conditions are customary in the trade²⁰³ creates a monopoly situation.

Nevertheless, it is debatable whether the monopoly argument alone would hold in court. Firstly, the charterer nominates the port and freely enters into a contract of delivery with the terminal based on profit considerations. Secondly, due to the regularity of the gas trade the shipowner is often aware of what ports will be involved and freely enters into the charter party based on profit considerations and may thus choose to avoid charter parties involving certain trade areas.²⁰⁴

As regards ii), there are three degrees of fault, namely ordinary negligence, gross negligence and intent. There is no sharp borderline between ordinary and gross negligence, but the Norwegian Supreme Court has stated that gross negligence must represent '*a clear departure from conduct which is ordinarily justifiable*' and the person must be '*substantially more to blame than in the case of ordinary negligence*.'²⁰⁵

The traditional view under Norwegian law has been that all liability may be disclaimed, except for a person's own intent or gross negligence.²⁰⁶ This indicates that vicarious liability for gross negligence and intent may be disclaimed.²⁰⁷

²⁰³ Cf. 7.3.1 below

²⁰⁴ At the introduction of OPA 90 some Norwegian shipowners chose to avoid charter parties involving US ports due to the unlimited liability for oil pollution

²⁰⁵ Rt. 1989.1318 NSC (unofficial translation)

²⁰⁶ *Hagstrøm*: Ansvarsfraskrivelse, p. 421

²⁰⁷ *Bull*, p. 394, cf. Rt. 1948.370 NSC. Compare *Hagstrøm*: Ansvarsfraskrivelse, p. 449 for a different position

Case law has a strong tradition for setting aside disclaimers of gross negligence on the basis of NL 5-1-2, and it should be noted that when § 36 was introduced the legislators decided to keep NL 5-1-2.²⁰⁸

In the area of offshore construction contracts, which similarly to CoU are based on principles of risk allocation rather than compensation,²⁰⁹ legal literature leans towards the opinion that if the contracts are agreed documents where both parties have influenced the agreement, the courts are not likely to set aside disclaimer clauses except where the loss is caused by the management's intent and perhaps also gross negligence,²¹⁰ since setting aside such contracts would adversely affect predictability. Thus, in the case of intent the court would most likely set the disclaimers aside.

The position of gross negligence, on the other hand, seems to be more open, and legal theory points in different directions.²¹¹ The literature seems to favour the opinion that in the case of gross negligence, a complete evaluation must be made of the circumstances relating to the contract and the position of the parties rather than of traditional concepts like gross negligence and intent.²¹²

Another important element is the court's attitude, and this varies from country to country.²¹³ Far-reaching disclaimer and indemnity provisions have been set aside on the basis of unreasonableness in other jurisdictions, e.g. in some American states.²¹⁴ On the other hand, as explained in 5.2 above, an English court would not set aside such onerous indemnity clauses *inter alia* due to the fact that they are customary in the trade. This *general practice* test also seems to be important in Norwegian jurisprudence, which states

²⁰⁸ *Hagstrøm*: Ansvarsfraskrivelse, p. 464

²⁰⁹ *Bull*, pp. 346 et seq.

²¹⁰ *Bull*, p. 394

²¹¹ *Hagstrøm*: Ansvarsfraskrivelse, pp. 462 et seq. and *Kaasen*, pp. 601 et seq.

²¹² *Kaasen*, p. 609 and *Hagstrøm*: Ansvarsfraskrivelse, pp. 463 and 473

²¹³ *Bull*, p. 393

²¹⁴ *Bull*, p. 393

that ‘*well established and commonly employed contractual conditions*’ within the trade will normally not be set aside under § 36.²¹⁵ This points against setting aside the provisions.

On the other hand, an important element of consideration for the court would be whether the contracts allocate liability fairly and reasonably.²¹⁶ The CoU are not agreed documents, and this may lead the court to exercise a more restrictive interpretation. If one commercial party is inferior in the sense that it has had little opportunity to influence the contents of the contract, the court may intervene.²¹⁷ Other Scandinavian Supreme Courts have adjusted contracts in such instances and ‘*there is reason to believe that our Supreme Court may go the same way*’.²¹⁸

The CoU are imbalanced contracts channelling all risk and unlimited liability to a party who may neither influence contents nor refuse to be bound. This creates a situation in which the effects of unreasonable contract terms and monopoly are combined. On this basis, I believe it is likely that a Norwegian court may adjust or set aside these liability provisions.

7 Insurance cover. Risk allocation between charterer and shipowner

7.1 Introduction

Norwegian shipowners normally effect insurance on Norwegian or English terms. The following discussion will be based on the Norwegian terms, more specifically the NMIP with respect to hull insurance, and Gard Statutes and Rules 2008 (GR) with respect to P&I insurance.

²¹⁵ *Hagstrøm*: Urimelige avtalevilkår (LoR 1994 No. 3/4), p. 156 (unofficial translation)

²¹⁶ *Bull*, p. 393

²¹⁷ *Woxholth*, p. 368

²¹⁸ *Woxholth*, p. 369 (unofficial translation), cf. *Hagstrøm*: LoR 1994, p. 149

Generally speaking, shipowner insurances are divided into asset insurances (mainly hull and machinery), income insurances (mainly loss of hire) and liability insurances (mainly P&I).

Damage to and loss of the ship is the main area for ordinary hull insurance, whereas the chief function of P&I insurance is to protect the shipowner against third party liabilities, like personal injury, cargo damage, pollution, wreck removal, measures to avert or minimise loss and salvage. Moreover, the hull insurer and P&I insurer share the collision liability between them.

In relation to the CoU striking damage is particularly relevant, and due to the explosive nature of the cargo, it is possible to imagine rather costly losses in relation to cargo operations.

There are three means by which the shipowner may seek to limit such risks:

- 1) cover under P&I insurance
- 2) cover under hull insurance
- 3) charter party regulations of liabilities and costs

However, as shown below the risks arising from the CoU are not covered under the ordinary insurances, and thus the need for separate cover emerges. Another solution for the shipowner is to alleviate the risk by ensuring an acceptable distribution of risks and costs between shipowner and charterer in the charter party.

7.2 and 7.3 will examine the cover under P&I insurance and hull insurance, respectively, whereas 7.4 will look at risk allocation options under the terms of the charter parties.

7.2 Protection and indemnity insurance

7.2.1 The effect of onerous contract terms

A significant share of liabilities associated with a port call would normally be covered under the P&I insurance.²¹⁹

However, the P&I insurers have rules which exclude liabilities in excess of what follows from ordinary background law, cf. GR 55 ‘*Terms of contract*’ clause a):

‘The Association shall not cover under a P&I entry liabilities, losses, costs or expenses:

- a) which would not have arisen but for the terms of the contract or indemnity entered into by the Member, or by some other person acting on his behalf, unless the terms have previously been approved by the Association, or cover for such liabilities, losses, costs or expenses has been agreed between the Member and the Association, or the Association decides, in its discretion, that the Member should be reimbursed;*

Particularly the following aspects of the CoU are not acceptable to the P&I insurers: the strict and unlimited liability and the absence of any requirement for causation.²²⁰

Gard’s exclusion only applies to liabilities arising under a contract and not liabilities arising in tort or statute. Such contracts may be e.g. standard towage contracts and contracts and indemnities given to port authorities and harbour pilots.²²¹

Notably, standard cover under P&I insurance is unlimited because the insurers may normally invoke the shipowner’s statutory right of limitation.²²² Contracts imposing unlimited liability are therefore particularly onerous to the P&I insurers.

²¹⁹ Inter alia GR 27 – 30 and 33 (personal injury and belongings), GR 34 – 35 (cargo liabilities), GR 36 – 37 (collision and striking), GR 38 (pollution), GR 40 (wreck removal), GR 42 (salvage), GR 43 (towage) and GR 46 (measures to avert or minimise loss)

²²⁰ *Rygh*: Terminalvilkår

²²¹ Gard Handbook on P&I Insurance (1996), p. 487

²²² Cf. 6.2.5 above

Consequently, as a starting point contracts with these characteristics are not accepted by the insurers. Inter alia the Norwegian insurer Gard and the British insurer Britannia have refused cover for the CoU in their present form.²²³

As previously indicated, the oil trade partly solved the P&I insurance problem with side letters, whereby the terminals agreed not to rely on the indemnity clauses if the loss was resulting from negligence or default on their own part.²²⁴ However, side letters do not seem to be as widespread in the gas trade.

7.2.2 Contract adjustment

Where the charterer has been in a position to make requirements, it has proven possible to adjust the CoU sufficiently through negotiations to obtain P&I approval. One option is to negotiate terminal-specific CoU with the most regular terminals. This is particularly relevant where the charterer is involved on the owner side of the terminal, which is not uncommon in the trade.

As previously mentioned, the Ras Laffan, Altamira and Hazira Conditions have obtained such approval after sufficient adjustment. What distinguishes these contracts from the others is primarily the indemnity provisions, which are negligence-based, the presence of causation and the limitation of liability.

With respect to the Altamira Conditions, the insurers have pointed out that wreck removal should be compulsory under local law and/or by local authorities in order for cover to apply. The starting point for P&I cover of wreck removal is cover of all liability imposed either by statute or authorities. Still, even if the shipowner has assumed a seemingly more far-reaching liability than what follows from background law, the risk of cancellation by

²²³ *Rygh*: Terminalvilkår

²²⁴ Cf. 4.2 above

the insurer is not high, since the authorities in such a situation are likely to demand removal anyway.²²⁵ In the case of Altamira, wreck removal will apparently be ordered by the authorities in any event, and thus there appears to be no excessive exposure in respect of cover.

As regards the Hazira Conditions, the wording is still considered to be onerous by the insurers, but is nevertheless acceptable in respect of cover for liabilities arising under the indemnity to the limit stipulated in the contract²²⁶ for any one incident or occurrence.

These contracts nevertheless prove that it is possible to adjust the provisions to make them acceptable to the P&I insurers.

Notably, the Punta Europa Conditions require compulsory P&I cover,²²⁷ but is not acceptable as of yet. This contract also contains stipulations concerning limitation of liability and exception for sole negligence on the part of the terminal, but differs from the three approved ones inter alia with respect to lack of negligence-based liability and causation.

7.2.3 Separate additional insurance cover

Where negotiations do not prove successful, the alternative is to sign up for additional insurance cover. Both Gard and Britannia provide such additional insurances.

Gard offers a separate insurance to its members for this purpose, the cover of which costs approximately USD 17,000 per port call. The limitation amount is USD 100 million and the cover lasts for the duration of the call.

²²⁵ *Bull*, p. 378

²²⁶ Clause 2.10

²²⁷ Clause 2.4

Britannia does not offer any separate insurance cover of its own, but is able to procure coverage in the London market. Still, this solution is far more expensive, up to USD 70,000 per call. However, it may prove to be less practical, since Gard also offers its additional insurance to non-members for approximately USD 27,000 per call.

7.3 Hull insurance

7.3.1 The effect of unusual or prohibited terms

As already mentioned, in addition to ordinary hull cover the hull insurer also bears a substantial portion of the collision liability.

In relation to hull cover, the terminal may cause damage to the vessel, inter alia in relation to navigational services by pilots and tugs, mooring and cargo operations or insufficient safety procedures. As regards damage caused to the ship by the terminal, the starting point is found in NMC § 12-1, which states that the ship is to be restored to the condition it was in prior to the occurrence of the damage.

In relation to collision cover, striking is particularly practical with respect to terminal damage, as already exemplified by *The Polyduke* case.

The starting point for collision cover under hull insurance is found in NMIP §13-1 first subparagraph:

‘The insurer is liable for liability imposed on the assured for loss which is a result of collision or striking by the ship, its accessories, equipment or cargo, or by a tug used by the ship.’

However, hull cover may cease as a consequence of the CoU.

NMIP § 4-15 '*Unusual or prohibited terms of contract*' contains a provision similar to GR 55:

'The insurer is in no case liable for liability incurred because the assured or someone on his behalf:

- a) has entered into a contract that results in stricter liability than that which follows from the ordinary rules of maritime law, unless such terms must be considered customary in the trade concerned,*
- b) has used or failed to use terms of contract which the insurer in accordance with § 3-28 has prohibited or described.'*

Based on this, some hull insurers have stated that as long as the P&I insurers do not accept these contracts, neither do they.²²⁸

However, there is a vital difference between NMIP § 4-15 and GR 55: Whereas the decisive point for P&I coverage is whether such liability would not have arisen but for the contract terms *unless especially approved* by the insurer, the decisive point in hull insurance is whether '*such terms must be considered customary in the trade*'. The word '*customary*' implies no restrictions on grounds of reasonableness, since when the contracts are customary they are most likely known by the parties and may thus be provided for. Therefore, if the terms are considered to be customary, the hull insurer would have to issue cover even if the P&I insurers refuse.

The effect of such *general practice* on onerous terms has never been brought before a Norwegian court, but as mentioned above, *The Polyduke* decision contains statements to the effect that such indemnity clauses are in fact customary. The defendant shipowner was Norwegian, and the insurance was effected on the basis of the NMIP. The court made express reference to the wording '*unless such terms may be considered customary in the trade concerned*,' stating that this made the question of insurance cover depend on whether

²²⁸ Rygh: Terminalvilkår

the onerous clause may be considered to be customary in the tanker trade.²²⁹ It is evident from the decision that the court considered such conditions customary. In direct response to the shipowner's contention that the clause was especially wide, the judge referred to '*the background of similar conditions in force at other oil terminals in many parts of the world*'.²³⁰ The court also stated that there is a general practice in the tanker trade of masters being required to sign such documents. It was held that the clause in question '*however harsh and one-sided [was] in line with many similar provisions*',²³¹ and in fact '*fairly common*'.²³²

The statements concerning general practice in the oil trade also have relevance for the gas trade, since it is often the same petroleum companies which own the terminals. Although CoU are mainly employed by export ports, they are quite commonly used by these terminals. It is thus doubtful whether the hull insurers' rejection of coverage would be upheld by court.

However, the hull insurer may also try to invoke NMIP § 3-28, which gives the insurer the right to exclude certain contract terms either from contracts in general or with respect to a specific port or trade. According to § 4-15 (b), see above, the *general practice* test does not apply to such terms prohibited by the insurer. Subsequently, it is possible for the insurer first to exclude onerous terms in accordance with § 3-28, and thereafter refuse insurance under § 4-15 (b).

7.3.2 The effect of recourse waiver

With respect to recourse claims, NMIP § 5-14 '*Waiver of claims*' opens for reduced liability for the insurer if the assured has waived its rights towards third parties, e.g. in connection with indemnification of the terminal:

²²⁹ p. 214

²³⁰ p. 216

²³¹ p. 216

²³² p. 216

‘The insurer’s liability shall be reduced by an amount equal to that which he is prevented from collecting because the assured has waived his right to claim damages from a third party, unless the waiver may be considered customary in the trade in question, or was given in accordance with directions issued by the insurer on the basis of § 3-28.’

*Handbook in hull insurance*²³³ discusses recourse in relation to tug contracts:

‘However, contracts for towage often contain more far-reaching liability provisions, whereby the towed ship will be held liable for damage suffered by the tug itself, whether or not the tug has collided with the tow or with an oncoming ship and regardless of whether or not the damage is a result of the tug’s own negligence. Such contracts for towage may also prevent recourse actions from the insured ship against the tug in situations where the insured ship has incurred liability towards an oncoming ship. As long as such contract terms must be “considered customary in the trade concerned”, cf. NMIP § 4-15 letter (a), or are not “prohibited” by the insurer according to NMIP § 3-28, cf. NMIP § 4-15 letter (b), the resulting liability for the insured ship will be fully recognised by the hull insurer and covered by him in his capacity as liability insurer under NMIP § 13-1.’

If we apply this text by analogy to terminal conditions, we are left with the following situation: While recourse from the terminal is highly unlikely in practice, once again the issue must be decided on whether the waiver can be considered customary in the trade or has been prohibited by the insurer. Reference is thus made to the discussion above.

²³³ *Wilhelmsen/Bull*, p. 288

7.4 Charter party cover

7.4.1 Cover under the ordinary charter party terms

In time chartering the operational costs are divided between shipowner and charterer. The shipowner undertakes to pay for the vessel's equipment, maintenance and crew, whereas the charterer covers costs related to voyage orders, i.e. bunkers and expenses associated with the port call.²³⁴ Insurance costs normally fall on the shipowner under a time charter party²³⁵ since insurance is often tied to the duty to repair and maintain.²³⁶

However, since the need for separate additional insurance cover is directly related to the port call and thus originates from the voyage orders, it is not automatically clear that the shipowner should assume these costs, and the same line of reasoning applies to possible uninsured liabilities arising from the CoU.

On the other hand, these are not direct expenses but potential indirect costs of additional insurance or alternatively an increased risk for the shipowner, and may thus not necessarily be transferred to the charterer without special regulation.²³⁷ The shipowner can therefore not rely on automatic charter cover of increased liabilities and costs imposed by the terminal unless this has been specifically agreed from the outset.²³⁸

However, it has proven possible for some shipowners to obtain reimbursement by the charterer for such separate insurances under ordinary charter party terms without any prior agreement or specific regulation of the issue. Moreover, under some charter parties insurance costs are covered by the charterer on a so-called '*costs pass through*' basis, which in this context implies that the charterer is directly liable for incurred costs instead of reimbursing the shipowner. Such a system gives the charterer increased influence on expenditure.

²³⁴ Falkanger/Bull/Brautaset, p. 408

²³⁵ Michelet: Håndbok i tidsbefraktning (1997), § 6.23. p. 144, cf. ShellLNGTime 1 Clause 40 (b) – (c)

²³⁶ Falkanger/Bull/Brautaset, p. 435

²³⁷ Rygh: Terminalvilkår

²³⁸ Rygh: Terminalvilkår

Nevertheless, since the shipowner may not automatically rely on ordinary charter party cover of such costs, Nordisk recommends implementing a special provision to ensure such cover. Furthermore, in addition to channelling extraordinary insurances expenses to the charterer, such a charter party provision should also contain an indemnification clause whereby the charterer assumes liability for potential uninsured losses or claims arising from the CoU.

7.4.2 Suggested charter party provision

To accommodate the above needs, Nordisk has drawn up the following suggested charter party provision.

The first part of the provision regulates cover of additional insurances:

‘For the purpose of this clause, the words “Conditions of Use” shall mean any kind of agreement or terms that the Owners and/or the Vessel must enter into or accept with the operators of any port or terminal in order to be allowed access to or use of such port or terminal, whether or not such agreement or terms are entitled “Conditions of Use”.

If the context of such Conditions of Use are not acceptable to the Vessel’s P&I club, the Owners shall be entitled to take out separate or additional insurance cover, and any additional premiums and/or calls and/or extra deductibles required by the Vessel’s underwriters due to the Conditions of Use, shall be for the Charterers’ account.’

The second part of the provision contains an indemnification of the shipowner whereby the charterer assumes liability for potential uninsured losses or claims arising from the CoU and also stipulates that the vessel shall remain on hire, unless the situation is caused by the

sole negligence of shipowner or crew. The latter may become relevant for instance if the vessel is detained.

‘Notwithstanding anything else contained in this Charter Party, and notwithstanding whether or not additional insurance cover has been taken out in accordance with the above provision, all liability, delay, costs or expenses whatsoever arising out of or related to Conditions of Use shall be for the Charterers’ account and the Vessel shall always remain on hire, unless such liability, delay, costs or expenses result solely from the negligence of the Owners, Master or crew. The Charterers assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage whatsoever (including consequential loss and/or damage) and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Conditions of Use.’

8 Concluding remarks

The gas trade is dominated by large international petroleum companies with strong negotiating powers. Whereas the Conditions of Use are typically issued by export terminals, the charterers are typically involved on the import side. Amidst these two power players the shipowners have limited influence.

This discussion of the CoU has shown that the contracts are built on a principle of unilateral liability. The contractual provisions are characterised by unlimited and strict, or far-reaching, liability for the shipowner in the form of comprehensive indemnity and disclaimer clauses which together produce the effect that the shipowner becomes liable for all damage to its own and the terminal’s interests as well as third party interests.

The liability provisions depart from ordinary legal principles inter alia with respect to the unlimited and strict liability for the shipowner, the lack of requirement for causation and the terminal's disclaiming of all fault on the part of itself and its servants.

P&I insurers do not cover liabilities in excess of what is imposed by ordinary background law. The cover under hull insurance is more uncertain, since the decisive point for this insurance is whether such terms may be considered customary in the trade.

Moreover, how these risks should be allocated between shipowner and charterer is not automatically clear, with the result that the charterer may refuse to cover expenses related to the CoU.

Nevertheless, shipowners and charterers have a united interest in seeking to reduce this risk exposure, and so far two solutions have been successful to a certain extent:

- 1) adjustment of the CoU through negotiations
- 2) separate P&I insurance cover

Where the charterers have been in a position to make requirements, they have successfully negotiated sufficient adjustments of some CoU to obtain P&I approval. This proves that it is possible to negotiate balanced solutions. What distinguishes the approved contracts from the others is primarily the negligence-based liability on the part of the shipowner, the existence of causation and the limitation of liability.

Moreover, separate P&I insurances with an additional premium and limited liability cover are now available in the market.

Nevertheless, the shipowner is still exposed to increased risk, inter alia if the hull insurer rejects cover, or if P&I liabilities exceed the limited cover under the additional insurance. Such risks should, if possible, be provided for in the charter party.

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List of abbreviations

CoU – Conditions of Use

DCA – Danish Court of Appeal

DSC – Danish Supreme Court

GR - Gard Statutes and Rules 2008

IMO - the International Maritime Organization

LNG – liquefied natural gas

LPG – liquefied petroleum gas

LoR – Lov og Rett (law report containing Norwegian legal articles and literature reviews)

MARPOL - International Convention for the Prevention of Pollution from Ships of 1973, amended 1978

NA – Norwegian Arbitration

NCA – Norwegian Court of Appeal

NJA – Nytt juridiskt arkiv (law report containing inter alia all Swedish Supreme Court decisions)

NL – ‘Kong Christian Den Femtis Norske Lov’ of 15 April 1687

NMC – Norwegian Maritime Code of 24 June 1994 (No. 39)

NMIP – Norwegian Marine Insurance Plan of 1996 version 2007

Nordisk – Nordisk Defence Club

NSC – Norwegian Supreme Court

OPA 90 – the US Oil Pollution Act of 1990

P&I – Protection and Indemnity

RG – Rettens Gang (law report containing Norwegian Court of Appeal and First Instance decisions)

Rt – Norsk Retstidende (law report containing Norwegian Supreme Court decisions)

SIGTTO – Society of International Gas Terminal and Tanker Operators

SSC – Swedish Supreme Court

TRF – Tidsskrift for rettsvitenskap (law report containing Scandinavian legal articles and literature reviews)

Annex: Examined Conditions of Use

The following contracts, in alphabetical order, have been analysed in this thesis:

Abu Dhabi, United Arab Emirates (Annex 1)

Altamira, Mexico (Annex 2)

Bonny, Nigeria (Annex 3)

Braefoot Bay, United Kingdom (Annex 4)

Escravos, Nigeria (Annex 5)

Hazira, India (Annex 6)

Kharg Island, Iran (Annex 7)

Kuwait, Kuwait (Annex 8)

Port Rashid, Dubai (Annex 9)

Punta Europa, Equatorial Guinea (Annex 10)

Qalhat, Oman (Annex 11)

Ras Laffan, Qatar (Annex 12)

Sharjah, United Arab Emirates (Annex 13)



CONDITIONS OF USE OF THE ABU DHABI PETROLEUM PORTS
TERMINAL FACILITIES.

In these conditions of use of Abu Dhabi Petroleum Ports, the word Company encompasses ADNOC, and any ADNOC associated Companies operating in the Port.

In addition to any other conditions which may be separately prescribed by the Abu Dhabi Petroleum Ports Regulations, law or enactment, all facilities and assistance of any sort whatsoever provided by the Company in or in connection with the Petroleum Port terminal facilities whether or not any charge is made by the Company, therefore, are provided subject to the following conditions:

1. Neither the Company nor their servants (in whatever capacity they may be acting) shall be responsible for any loss, damage or delay from whatsoever cause arising in consequence of any assistance, advice or instructions whatsoever given or tendered in respect of any ship, whether by way of pilotage or mooring services, the provision of navigational facilities, including buoys or other channel markings, or otherwise howsoever. In all circumstances the Master of any ship shall remain solely responsible on behalf of his owners for the safety and proper navigation of his ship and liable for the cost of any damages and any loss whether actual or consequential due to pilot's neglect, error or mistake.
2. Whilst the Company takes every care to ensure that the Terminal facilities, property, gear, craft and equipment provided by the Company are safe and suitable for ships permitted or invited to use them, no guarantee of such safety or suitability is given and the Company shall not be responsible for any loss, damage or delay of any sort that may be sustained by or occur to any ship or her owners or her cargo or any part thereof (whether such cargo is on board or in course of loading or discharging) by whosoever and by whatsoever cause such loss, damage or delay is occasioned and whether or not it is due in whole or in part to any act, neglect, omission or default on the part of any servant or agent of the Company or by any fault or defect in any of their terminal premises, facilities, property, gear craft or equipment of any sort.
3. The Company will not be responsible for any loss, damage or delay directly or indirectly caused by or arising from strikes, lockouts or labour disputes or disturbances whether the Company or its servants are parties thereto or not.
4. If in connection with or by reason of the use by any ship of any Terminal or of any part of the Company's premises or of any gear or equipment provided by the Company or of any

craft or any other facility or property, of any sort whatsoever, belonging to or provided by the Company any damage is caused to any such berth, premises, gear or equipment, craft or other facility or property, from whatsoever cause such damage may arise, and irrespective of whether or not such damage has been caused or contributed to by the negligence of the Company or its servants, and irrespective of whether there has been any neglect or default on the part of the ship or the owners, in any such event the ship and her owners shall jointly and severally pay for all such damage or loss and shall hold the Company harmless from and indemnified against all such damage and against all loss sustained by the company consequent thereon. Further the ship and her owners shall hold the Company harmless from and indemnified against all and any claim damages, costs and expenses arising out of any loss, damage or delay caused to any third party by the ship or by her Master or her crew or by any other servant or agent of the owners.

5. If any ship, aircraft, or other object sinks or grounds or otherwise becomes or likely to become in the opinion of the Company, an obstruction or danger to navigation and its owner or his agent fails to remove the obstruction or danger so caused within the period of the written notice served by the Port Officer, then the owner or agent shall have committed a punishable criminal offence. This shall not prejudice the Company's right, for the sake of safeguarding the interest of the port, take action to remove the obstacle and the expense incurred shall be recoverable from the Master or owners of the ship or aircraft who shall be jointly liable thereof.
6. If, in the opinion of the Company, any ship or aircraft sinks or grounds or otherwise becomes an obstruction which constitutes an immediate danger to shipping, it may take the necessary immediate measures to remove the obstruction without the need of any notice, and shall be entitled to recover from the person mentioned in the previous Article any expense incurred by it in the process. (Art. 46).
7. These conditions shall be construed to the Law of U.A.E., and if so required by the Company, the ship and her owners shall submit to the jurisdiction of U.A.E courts.

DAMAGE CLAIMS:

The Company shall be held harmless from any claims for damage allegedly incurred by ships during anchoring, weighing anchor, mooring to Terminals or unmooring. The alleged damage should always be reported immediately to the Port Officer who will inspect the damage before the ship sails. The inspection of such damage will in no way make the Company liable for such damage, and the Company will continue to be harmless from any claims submitted by the ship, master or owner. The damage must be reported in writing and signed by the Master of the ship.



SAFETY REQUIREMENTS

The Master
SS / MV / MT.....

Port

Dear Sir,

Responsibility for the safe conduct of operations whilst your ship is at this terminal rests jointly with you, as master of the ship, and with the responsible terminal representative. We wish, therefore, before operations start, to seek your full co-operation and understanding on the safety requirements set out in the Ship/Shore Safety Check List which are based on safe practices widely accepted by the oil and tanker industries.

We expect you, and all under your command, to adhere strictly to these requirements throughout your stay at SPM/alongside this terminal and we, for our part, will ensure that our personnel do likewise, and co-operate fully with you in the mutual interest of safe and efficient operations.

Before the start of operations, and from time to time, thereafter, for our mutual safety, a member of the terminal staff, where appropriate together with a responsible officer, will make a routine inspection of your ship to ensure that the questions on the Ship/Shore Safety Check List can be answered in the affirmative. Where corrective action is needed, we will not agree to operations commencing, or, should they have been started, we will require them to be stopped.

Similarly, if you consider safety is endangered by any action on the part of our staff or by any equipment under our control, you should demand immediate cessation of operations.

~~SHORE SAFETY CHECK LIST~~

Please acknowledge receipt by signing below.

Signed: _____
Terminal Representative

Terminal Representative on Duty is _____

Position or Title: _____

Telephone No.: _____

UHF / VHF Channel: _____

Signed: _____
Master

SS / MV / MT _____

Date _____ Time _____



CONDITIONS OF USE

All Port Facilities, Port Services and other assistance of any kind whatsoever provided to a vessel calling at the LNG Facility are provided subject to all applicable laws, regulations and codes and to these Conditions of Use. These Conditions of Use shall (a) apply to each vessel calling at the LNG Facility regardless of whether any such vessel pays or owes amounts to the Company or any Company Representative and (b) be deemed to have been expressly accepted by each vessel calling at the LNG Facility regardless of whether such acceptance has been acknowledged in writing or otherwise.

For purposes of these Conditions of Use, the following definitions shall apply:

"Company" means Terminal de LNG de Altamira, S. de R.L. de C.V. and its affiliated entities.

"Company Representative" means any director, officer, employee, contractor, servant, consultant, advisor, agent or representative of the Company in whatever capacity they may be acting.

"LNG Facility" means the liquefied natural gas unloading, storage, regasification and send-out facility owned by the Company and located within the Port of Altamira.

"Port of Altamira" means the Puerto Industrial de Altamira, Tamaulipas, Mexico, and includes the Administración Portuaria Integral de Altamira, S.A. de C.V.

"Port Facilities" means all the infrastructure, facilities, equipment, installations, anchorages and approaches of and to the Port of Altamira and the LNG Facility, including, but not limited to, channels, channel markings, buoys, jetties, berths, lines and gangways.

"Port Services" means any service tendered or provided by the Port of Altamira or the Company to a vessel, including pilotage, towage, tug assistance, mooring or other navigational services, whether for consideration or free of charge.

All vessels calling on the LNG Facility must be capable of operating within the physical limitations of the Port Facilities and the LNG Facility's berth dimensions, unloading arm envelopes and mooring equipment as detailed in the Company's *Marine Terminal Guidelines, Procedures and Emergency Response* or as advised from time to time by the Company or a Company Representative. In addition to the requirements of applicable laws, regulations and codes, the following conditions shall apply to each vessel calling at the LNG Facility:

1. The master of a vessel shall at all times and in all circumstances remain solely responsible on behalf of the vessel's owners for the safety and proper navigation of his vessel and shall at all times comply with the Port of Altamira regulations, all applicable laws, regulations and codes and the Company's *Marine Terminal Guidelines, Procedures and Emergency Response*.

2. The Company makes no warranty with respect to Port Facilities or to the rendering of Port Services and any use thereof shall be at the sole risk of the vessel master and owners. The Company shall not be responsible for any loss or damage to a vessel, actual or consequential, which is related to Port Facilities or to Port Services provided to a vessel regardless of any act, omission, fault or negligence of the Company.

3. The Company shall not be responsible for acts or omissions of Company Representatives resulting in any loss or damage to a vessel, or any loss or injury suffered by the master, officers or crew of a vessel.

4. The Company shall not be responsible to any vessel for any loss related to strikes or other labour disturbances, regardless of whether the Company or Company Representatives are parties thereto.

5. The vessel and its owners shall in all circumstances hold harmless and indemnify the Company against any and all losses, claims, damages, costs and expenses the Company may incur or has incurred arising from:

- (a) Any damage to the LNG Facility or Port Facilities or injury to its personnel related to the vessel's use of the LNG Facility or Port Facilities and involving the fault, wholly or partially, of the master, officers or crew of the vessel, including negligent navigation;
- (b) Any loss suffered by third parties with respect to damage to their property or injury to their personnel related to the vessel's use of the LNG Facility or Port Facilities and involving the fault, wholly or partially, of the master, officers or crew of the vessel, including negligent navigation;
- (c) Any hazard under condition 6 hereof and involving the fault, wholly or partially, of the master, officers or crew of the vessel, including negligent navigation;
- (d) Any loss or damage to the vessel while in the Port of Altamira, including consequential losses and all claims, damages and costs arising therefrom, regardless of any act, omission, fault or negligence by the Company; and
- (e) Any personnel injury or property loss suffered by the master, officers or crew of the vessel while in the Port of Altamira, including consequential losses and all claims, damages and costs arising therefrom, regardless of any act, omission, fault or negligence by the Company.

6. If the vessel or any object on the vessel becomes or is likely to become an obstruction, threat, or danger to navigation, operations, safety, health, environment or security of the Port of Altamira (a "hazard"), the master and the owner shall, at the option of the Port of Altamira, take immediate action to clear, remove or rectify the hazard as the Port of Altamira may direct, or the Port of Altamira shall be entitled to take such measures as it may deem appropriate to clear, remove or rectify the hazard, and the master and owner shall be responsible for all costs and expenses associated therewith.

7. Any liability incurred by the master or owner by operation of these Conditions of Use shall be joint and several.

8. Without limitation of the liability of the master and the owner, the master shall immediately report to the Port of Altamira and the Company any accident, incident, claim, damage, loss or unsafe condition or circumstance. Any such report shall be made in writing and signed by the master. The Port of Altamira and the Company shall be entitled to inspect and investigate any such report but without prejudice to the foregoing.

9. These Conditions of Use shall be construed, interpreted and applied in accordance with laws of the United Mexican States and, if so requested by the Company, the vessel and her owners shall submit to the exclusive jurisdiction of the Mexican courts.

10. Subject to condition 11, any liability of the master and owner to the Company by virtue of the operation of these Conditions of Use shall be limited to US\$150,000,000 for any accident or occurrence.

11. The limit of liability set out in condition 10 shall not limit, restrict or prejudice any claim or right that the Company has or may have against the master or owner under general principles of law or equity. For the avoidance of doubt, said limit of liability shall only apply with respect to, and to the extent of, a claim by the Company against the master or owner under these Conditions of Use.

ACKNOWLEDGEMENT

Name of vessel: _____

As master of the above-named vessel, I acknowledge for and on behalf of the vessel's owners and operators that the above Conditions of Use of Terminal de LNG de Altamira govern the use by such vessel of the LNG Facility.

Signed: _____

By master for and on behalf of the
Owners and Operators of Vessel

Date: 02 January 2008



5. TERMINAL REGULATIONS

5.1 ACCEPTANCE CONDITIONS

All vessels nominated for this Terminal must be capable of operating within the physical limitations of the berth dimensions, loading arm and shore gangway envelopes and mooring equipment as detailed in this document or as advised by the Terminal from time to time. The Terminal will normally vet vessels and give tentative acceptance, which would only be confirmed after physical inspection and completion of ship/shore safety checks alongside.

In addition to any other conditions which may be prescribed by regulation, law or enactment, any and all facilities and assistance of any sort whatsoever provided by the Company's in connection with Company Terminal facilities whether or not any charge is made by the Company therefore, are provided subject to the following conditions:

- Neither Company nor its servants, agents or contractors (in whatsoever capacity they may be acting) shall be responsible for any loss, damage or delay arising from the use of the Marine Terminal by any vessel including but not limited to any assistance, advice or instructions given or tendered in respect of any vessel, whether by way of Pilotage or berthing services, the provision of navigational facilities, including buoys or other channel markings or otherwise, even if such loss, damage or delay shall have been caused wholly or partly by the negligence or other default of either Company, its servants, agents or contractors. In all circumstances, the Master of any vessel shall remain responsible on behalf of his owners for the safety and proper navigation of his vessel.
- If in connection with the use by any vessel of any berth or jetty or of any part of the Company's premises, or of any gear or equipment provided by the Company, or of any craft or of any other facility or property of any sort whatsoever, belonging to or provided by the Company, any loss of, or damage is caused to any such berth, jetty, premises, gear or equipment, craft or other facility or property, or injury or death to any person employed on the premises, due to whatever reason and irrespective of whether there has been any negligence or default on the part of the vessel or the owners, their servants, agents or contractor in any such event the vessel and owners, their servants, agents or contractors, in any such event the vessel and the owners shall hold the Company harmless from and indemnified against all such loss or damage and against all loss sustained by the Company as a consequence thereof. The Company shall have the right to detain a vessel causing damage to property, death or injury to any person until sufficient security has been given by the owners for the amount of the damage done or loss incurred.
- Further, the vessel and her owners shall hold the Company harmless from and indemnified against all and any claim, damages, costs and expenses arising out of any loss, injury or damage caused to any third party by the vessel or by her Master or crew or by any other servant or agent of the owners.
- If any vessel sinks or grounds or otherwise becomes, in the opinion of the Company, an obstruction or danger in any part of the Terminal or the approaches thereto and the owners of the vessel fail to proceed forthwith to remove the obstruction or danger, the Company shall be empowered to take steps they may deem fit to remove the obstruction or danger and any expenses incurred as a result of such removal shall be recoverable from the owner of the vessel.

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- The Company reserves the right to suspend operations and require the removal of any vessel from the Terminal where:
 - (i) there is any infringement or breach of Marine Terminal Regulations.
 - (ii) in the reasonable opinion of the Terminal Representative, the condition of the ship or the conduct of her operations gives rise to concern over the safety of the vessel, its personnel and those of Company, the Terminal or the environment.
 - (iii) the operational performance (appropriate to the type of vessel and operation) fails to utilize satisfactorily the available Terminal facilities, and thereby in the reasonable opinion of the relevant Company Representative, constitutes an unacceptable constraint on the Terminal operation.
- Neither Company nor its servants or agents (in whatsoever capacity they may be acting) shall be liable for any costs incurred by a vessel, its owners, charterers or agents as a result of delay to or suspension of loading or discharging or a refusal to load or discharge all or part of a nominated shipment, or a requirement to vacate the jetty arising from Safety Regulations
- The Tanker's Master is responsible for the safe and efficient operation of the Tanker. The Master is responsible for ensuring that all the requirements of the NPA and the Marine Terminal are met whilst the tanker is within the Bonny River. In particular, it is the Master's responsibility to ensure that the Officers and Crew are properly and correctly informed of their duties and understands how to fulfil them. It is incumbent on the Master to ensure full co-operation with the Terminal Representative, or his appointed deputy, so as to ensure a safe and efficient operation.
- Nigeria LNG is responsible for all marine activities at the Marine Terminal. This responsibility includes operation of the tugs and mooring boats, including the safe mooring and unmooring of tankers at the jetty, and ensuring the integrity of the safety zone around the jetty when a ship is in the berth.

The Terminal accept vessels on the basis that the Master and owners undertake that:

- They are designed, constructed, equipped, operated and maintained so as to comply (if the vessel is a ship to which the Code applies) with the provisions of the IMO Code for the Carriage of Liquefied Gases in Bulk and any amendments to the Code insofar as such amendments apply.
- They have aboard Master, Officers and crew trained and qualified in accordance with the relevant provisions of the international Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1995, where applicable. In all cases, the training qualifications and experience of the ship's staff shall be appropriate for the safe conduct of the loading or discharging operations being conducted at the Terminal and the nature of the products being handled.
- They have and retain on board sufficient personnel with good working knowledge of the English language to, at all times, enable operations to be carried out efficiently and safely and to maintain quick, reliable ship/shore communications on operating matters and in emergency situations.

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- In evidence of compliance with all requirements, they have on board all SOLAS, Classification Society and other safety certificates. A Certificate of Fitness is required in the case of all vessels carrying liquefied gases in bulk, together with a General Arrangement Plan showing the layout of the vessel in ENGLISH language and valid Certificates of Competency for all appropriate personnel in accordance with the law of the state in which the vessel is registered.
- They have been inspected by an oil major under the OCIMF SIRE reporting scheme within the last 18 months.
- The Master (or his deputy) will together with the Terminal representative satisfactorily complete a ship/shore checklist in accordance with IMO resolution A435 (XI) "Handling of Dangerous Goods in Ports and Harbours" and will permit inspection of the vessel in accordance with OCIMF "Safety Inspection Guidelines" at any time without limitation.
- They present in all respects "ready to load" except for any deballasting operations necessary or as may be otherwise agreed with the Terminal in advance.
 - (i) For liquefied Gas Carriers, "ready to load," means that ship's tanks are fully cooled and in suitable condition to receive the nominated fully refrigerated product at normal loading rates.
 - (ii) Condensate Tankers fitted with Inert Gas Systems must arrive with all tanks inerted to less than 5% Oxygen content. Terminal personnel shall board to conduct tests of tank atmosphere
 - (iii) Ships, which are to receive LNG, will arrive at the Terminal with less than 1.0% vol. max. of oxygen in cargo tanks which contain hydrocarbon vapour. This oxygen level refers to the maximum that is considered safe for vapour return to flare only in cases of emergency
 - (iv) Ships loading Propane or Butane will be deemed not ready to load unless the specifications for vapour return could be achieved. See section D.
- Vessels arriving at the Terminal should be free of any cargo product, except the minimum requirement for conditioning the ship's tanks for the intended cargo, i.e. cargo heel. A partly laden vessel will not normally be accepted for either Jetty, unless prior agreement has been reached and all safety parameters have been assessed.
- In an Emergency or in exceptional circumstances the use of the shore vapour system to the flare will be permitted for a very limited period to prevent possible venting of cargo vapours to atmosphere. Under no circumstances may the shore vapour system be used if the oxygen content of the vapour contained within the ship's tanks exceeds 4% vol.
- In exceptional circumstances, a vessel not ready to load may be accepted at the discretion of the terminal. In this unlikely event, the vessel may be required to vacate the berth after loading sufficient product to conduct further cooling down or purging operations at anchor or sea. Any cooling down or purging operation conducted within the Bonny river estuary must have the express permission of the harbour master. In the event that a vessel requires

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cooling-down of her tanks at the Loading Port, Bonny terminal shall be notified in advance stating the approximate quantities of LNG/LPG and the anticipated time needed for cooling down operations.

- The vessel will vacate the jetty as soon as practicable after operations are completed. The Terminal reserves the right to require the ship to vacate the berth on completion of loading and to proceed to anchorage while awaiting delivery of cargo documents.

5.2 APPLICATION OF REGULATIONS

These Regulations, Bye-laws made by Local or Port Authorities and Acts of Government, shall be strictly observed within the Marine Terminal Area by all persons, including the personnel of vessels, i.e. ships, tugs, barges, launches, mooring boats and other craft.

5.2.1 CLEARANCE BY PORT FACILITY SECURITY OFFICER AND GOVERNMENT BOARDING OFFICIALS

Immediately upon berthing, the Port Facility Security Officer and Government boarding officials shall board to perform vessel clearance formalities. Loading shall not normally commence until clearance has been completed. At the moment, Government boarding team comprises:

- Nigerian Customs Service – 2 persons
- Nigerian Immigration Service – 2 persons
- Nigerian Port Health – 2 persons
- National Drug Law Enforcement Agency – 2 persons
- State Security Service – 1 person

5.3 SHIP / SHORE SAFETY

It is NLNG Policy to ensure the safety of both the ship and the terminal and of all personnel.

Safety at the Ship/Shore Interface is a shared responsibility between the Ship and the Terminal. A tanker presenting itself to load at the Terminal should check its own preparations and fitness for the safety of the intended operations. Additionally the Master has a responsibility to assure himself that the Terminal has also made proper preparations for a safe operation. Similarly the Terminal needs to check its own preparations and to be assured that the tanker has carried out its checks and has made the appropriate arrangements.

To this end it is NLNG Policy that no cargo operations shall commence until the International Ship/Shore Check List has been completed by the Ship and by the Terminal and it has been confirmed that such operations can be safely carried out.

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DEFINITIONS

In these Regulations, the following words and expressions have the following meanings:

APPROVED EQUIPMENT

Equipment of a design that has been tested and approved by an appropriate authority such as a Government Department or Classification Society. The Authority shall have certified the equipment as safe for use in a specified hazardous atmosphere.

AUTHORISED CRAFT

Any small barge, water boat or launch authorised by the Harbour Master and Braefoot Bay Supervisor to operate at Braefoot Bay Marine Terminal and which complies with the safety requirements of the Terminal.

BRAEFoot BAY MARINE TERMINAL

The fenced area of Braefoot Bay Terminal, including the storage/process areas of ExxonMobil Chemical Olefins Inc. and Shell U.K. Exploration and Production and their respective tanker-loading jetties, together with that part of Mortimers Deep within 100 metres of the tanker-loading jetties, including any vessel which may be moored alongside.

COMPANIES

Shell U.K. Exploration and Production (a business name of Shell U.K. Limited) and ExxonMobil Chemical Olefins Inc., or, as the case may require, either of them, and 'COMPANY' shall be construed accordingly.

FORTH NAVIGATION SERVICE (FNS)

The Vessel Traffic Service for the Firth of Forth operated by Forth Ports PLC.

GAS-FREE

A tank, compartment or container is gas-free when sufficient fresh air has been introduced into it to lower the levels of any flammable, toxic or inert gases to those required for a specific purpose, e.g. hot work, entry, etc., and has been certified for that purpose by an authorised person.

HARBOUR MASTER

The Harbour Master appointed by Forth Ports PLC, includes his authorised deputies and assistants.

HOT WORK

Work involving sources of ignition or temperatures sufficiently high to cause the ignition of a flammable gas mixture. This includes any work requiring the use of welding, burning or soldering equipment, blow torches, power-driven tools, portable electrical equipment which is not intrinsically safe or contained within an approved explosion-proof housing, sandblasting, or internal combustion engine.

HOT WORK PERMIT (SHIP AT JETTY)

A document issued by the Braefoot Bay Supervisor and approved by the Harbour Master permitting specific hot work (as under Port Premises Bye-law 19) to be done during a specified time interval in a defined area.

INERT CONDITION (Shipboard spaces only)

A space is in inert condition when the oxygen content of the atmosphere throughout the space has been reduced to below 8% by volume by the addition of inert gas.

INERT GAS

A gas such as Nitrogen or Carbon Dioxide, or a mixture of such flue gases, containing insufficient oxygen to support the combustion of hydrocarbons.

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MAIN DECK

The main deck of a tanker is the steel plating forming the top of the cargo tanks, cofferdams and pumprooms. In other words, it is the uppermost continuous deck of the vessel.

MASTER

The Master or his duly authorised deputy or any person who for the time being is in charge of the vessel.

NAKED LIGHTS

Open flames or fires, exposed incandescent material or any other unconfined source of ignition.

OPERATIONS

The loading, discharging and transfer of Ethylene, Propane, Butane, Gasoline, C5+ Product, Gas Oil, ballasting/deballasting, gas-freeing, purging and tank-cleaning and any other activity associated with the handling of bulk petroleum derivatives.

OWNERS

Owners shall include the owners, disponent owners, managers and those acting on behalf of owners.

PORT COMPANY

Body responsible for the Terminal which is Forth Ports PLC.

RESPONSIBLE SHIP'S OFFICER

The Master or any officer to whom the Master may delegate authority for any operation or duty on board ship.

TANKER

Any ship designed either for the carriage of LPG or other Hydrocarbon products.

TERMINAL SUPERVISION

The Braefoot Bay Supervisor, or the respective authorised representatives for the Eastern and Western jetties.

(See Section B - General Information, Clause 1).

FORTH PORTS PLC

Forth Ports PLC is a Company incorporated under the Companies Acts 1985 - 1989 and having its registered office at Tower Place, Leith, Edinburgh EH6 7DB; it is the statutory successor to Forth Ports Authority by virtue of the Forth Ports Authority Scheme 1992 Confirmation Order 1992 ("Forth Ports").

The area of jurisdiction of Forth Ports PLC is the River and Firth of Forth, including Docks, Harbour and Marine Terminals; it extends from approximately one mile West of the Isle of May up river to Stirling.

VESSEL

Any ship, dredger, craft or other floating navigable object.

WORK PERMIT

A document issued by the Braefoot Bay Supervisor (and approved as may be required by the Harbour Master) permitting specific work to be done during a specified period in a defined area on board a ship berthed at Braefoot Bay.

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SECTION A - JETTY REGULATIONS

ACCEPTANCE CONDITIONS

(a) All vessels nominated for this Terminal must be capable of operating within the physical limitations of the berth dimensions, loading arm envelopes and mooring equipment as detailed in Appendix 'A1' and 'A2' or as advised by the Terminal from time to time. In addition to any other conditions which may be prescribed by regulation, law or enactment, any and all facilities and assistance of any sort whatsoever provided by the Companies in connection with Companies' Terminal facilities whether or not any charge is made by the Companies therefore, are provided subject to the following conditions:
(i) Neither Company nor its servants, agents or contractors (in whatsoever capacity they may be acting) shall be responsible for any loss, damage or delay arising from the use of the Braefoot Bay Marine Terminal by any vessel including but not limited to any assistance, advice or instructions given or tendered in respect of any vessel,

whether by way of pilotage or berthing services, the provision of navigational facilities, including buoys or other channel markings or otherwise, even if such loss, damage or delay shall have been caused wholly or partly by the negligence or other default of either Company, its servants, agents or contractors. In all circumstances, the Master of any vessel shall remain responsible on behalf of his owners for the safety and proper navigation of his vessel.

(ii) If in connection with the use by any vessel of any berth or jetty or of any part of the Company's premises, or of any gear or equipment provided by the Company, or of any craft or of any other facility or property of any sort whatsoever, belonging to or provided by the Companies, any loss of, or damage is caused to any such berth, jetty, premises, gear or equipment, craft or other facility or property, or injury or death to any person employed on the premises, due to whatever reason and irrespective of whether there has been any negligence or default on the part of the vessel or the owners, their servants, agents or contractor in any such event the vessel and owners, their servants, agents or contractors, in any such event the vessel and the owners shall hold the Companies harmless from and indemnified against all such loss or damage and against all such loss or damage and against all loss sustained by the Company consequent there on. The

Company shall have the right to detain a vessel causing such damage until sufficient security has been given by the owners for the amount of the damage done.

(iii) Further, the vessel and her owners shall hold each of the Companies harmless from and indemnified against all and any claim, damages, costs and expenses arising out of any loss, injury, damage caused to any third party by the vessel or by her Master or crew or by any other servant or agent of the owners.

(iv) If any vessel sinks or grounds or otherwise becomes, in the opinion of the Companies, an obstruction or danger in any part of the Terminal or the approaches thereto and the owners of the vessel fail to proceed forthwith to remove and continue to remove the obstruction or danger, the Companies shall be empowered to take steps they may deem appropriate to remove the obstruction or danger and any expenses of such removal shall be recoverable from the owner of the vessel.

(v) The Companies shall not be liable for any demurrage, loss claims or demands whatsoever resulting from or relative to any act or omission by Forth Ports PLC or representatives thereof.

(vi) The benefit of any relief or limitation of liability, hold harmless or indemnity under the foregoing provisions shall extend to any associated company or co-venturer of the Companies.

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(vii) These conditions shall be governed by Scottish law and if so requested by

the

Companies the vessel and her owners shall submit to the jurisdiction of the Scottish courts.

(b) The Companies are responsible for the safe conduct of operations at the Terminal and accept

vessels on the basis that the Master and owners hereby undertake that:

(i) They are designed, constructed, equipped, operated and maintained so as to comply (if

the vessel is a ship to which the Code applies) with the provisions of the IMO Code for the

Carriage of Liquefied Gases in Bulk and any amendments to the Code insofar as such

amendments apply. Conventional Tankers and Chemical Carriers must comply with all

relevant international Legislation and Classification Society Rules.

Vessels designed for the carriage of liquefied gases in bulk which for any reason are not

subject to the provisions of the IMO Code shall hold a valid certificate issued by the flag

administration of the vessel, or by a Classification Society acceptable to the Companies

and to Forth Ports PLC, confirming that the vessel is designed, constructed, equipped,

operated and maintained to the IMO standards for such vessels.

(ii) They have aboard Master, Officers and crew trained and qualified in accordance with the

relevant provisions of the international Convention on Standards of Training, Certification

and Watchkeeping for Seafarers 1995, where applicable.

In all cases, the training qualifications and experience of the ship's staff shall be

appropriate for the safe conduct of the loading or discharging operations being conducted

at the Terminal and the nature of the products being handled.

(iii) They have and retain on board sufficient personnel with good working knowledge of the

English language to, at all times, enable operations to be carried out

efficiently and safely

and to maintain quick, reliable ship/shore communications on operating matters and in

emergency situations.

(iv) In evidence of compliance with all requirements, they have on board all SOLAS,

Classification Society and other safety certificates. A Certificate of Fitness is required in

the case of all vessels carrying liquefied gases in bulk, together with a General

Arrangement Plan showing the layout of the vessel in ENGLISH language and valid Certificates of Competency for all appropriate personnel in accordance with the

law of the

state in which the vessel is registered.

(v) The Master (or his deputy) will together with the applicable Operating Company

representative satisfactorily complete a ship/shore checklist in accordance with IMO

resolution A435 (XI) "Handling of Dangerous Goods in Ports and Harbours" and will permit

inspection of the vessel in accordance with OCIMF "Safety Inspection Guidelines" at any

time without limitation.

(vi) Ships which are to receive LPG will arrive at the Terminal with less than 4.0% vol. max. of

oxygen in cargo tanks which contain hydrocarbon vapour.

Ships which are to receive Ethylene will arrive at the Terminal with less than 2.0% vol.

max. of oxygen in cargo tanks which contain hydrocarbon vapour.

This oxygen level refers to the maximum that is considered safe for vapour

return to flare

only in cases of emergency. It does not imply that this level of oxygen is acceptable from a commercial cargo contamination point of view.

(vii) They present in all respects "ready to load" except for any deballasting operations

necessary or as may be otherwise agreed with the Terminal in advance.

For liquefied Gas Carriers, "ready to load" means that ship's tanks are fully cooled and in

suitable condition to receive the nominated fully-refrigerated product at normal loading

rates. Ships loading Propane or Butane will be deemed not ready to load unless the

specifications for vapour return contained within Appendix A1, Product Loading and

Vapour Return Facilities, can be achieved. In exceptional circumstances, a vessel not

ready to load may be accepted at the discretion of the Companies. In this unlikely event,

the vessel may be required to vacate the berth after loading sufficient product to conduct

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further cooling down or purging operations at anchor or sea. It must be stressed, however,

that permission to cool down or purge alongside is not normally granted.

Any cooling down or purging operation conducted within the Forth Estuary must have the

express permission of the Chief Harbour Master.

For Condensate Carriers, "ready to load" means that the ship's tanks are compliant with

the specifications for vapour return contained within Appendix A1, Product Loading and

Vapour Return Facilities. In addition, if the vessel is calling at Braefoot Bay for the first

time her cargo tanks are required to be clean and gas free.

Any vessel nominated to load Condensate or Heart Cut Benzene must be fitted with a

vapour return system. Such systems must be capable of returning vapour to the shore

Vapour Emission Control System via ship's fixed pipework, located at the cargo manifold.

In addition, Condensate vessels, where the previous cargo contained Hydrogen Sulphide,

or sulphur greater than 0.3% by volume, the vessel must condition her tanks such that all

residues of the previous cargo are removed.

Tankers fitted with the Inert Gas Systems must arrive with all tanks inerted with Oxygen

content less than 8% Oxygen.

For all vessels, "ready to load" includes ship's cargo loading manifolds being compliant

with specifications contained within Appendix A1 and A2 to these regulations.

(viii) They will vacate the jetty as soon as practicable after operations are completed.

The Companies reserve the right to require the ship to vacate the berth on completion of

loading and to proceed to anchorage (if available, and subject to approval by the Harbour

Master) while awaiting delivery of cargo documents.

(c) The Companies reserve the right to suspend operations and require the removal of any vessel

from the Terminal where:

(i) There is any infringement or breach of Jetty Regulations.

(ii) In the reasonable opinion of the Terminal Supervision, the condition of the ship or the

conduct of her operations gives rise to concern over the safety of the vessel, personnel,

Terminal or the environment.

(iii) The operational performance (appropriate to the type of vessel and operation) fails to utilise satisfactorily the available Terminal facilities, and thereby in the reasonable opinion of the relevant Company, constitutes an unacceptable constraint on the Terminal operation.

(d) Neither Company nor its servants or agents (in whatsoever capacity they may be acting) shall be liable for any costs incurred by a vessel, its owners, charterers or agents as a result of a refusal to load or discharge all or part of a nominated shipment, delay to or suspension of loading or discharging, or a requirement to vacate the jetty arising from this Regulation or Safety Regulations hereof.

(e) Vessels arriving at the Terminal should be free of any cargo product, except the minimum requirement for conditioning the ship's tanks for the intended cargo, i.e. cargo heel. A partly laden vessel will not normally be accepted for either Jetty, unless permission has been granted from the Port Authority and Terminal, and all safety parameters have been assessed.

ACCOMMODATION DOORS AND PORTHOLES

All external doors and portholes shall be closed during operations.

Accommodation boundary doors

should preferably be fitted with self-closing or other control devices but at no time should they be locked.

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3 APPLICATION OF REGULATIONS

These Regulations, Bye-laws made by Local or Port Authorities and Acts of Parliament, shall be strictly observed within the Braefoot Bay Marine Terminal Area by all persons, including the personnel

of vessels, i.e. ships, tugs, barges, launches, mooring boats and other craft.

4 AVOIDANCE OF POLLUTION

(a) No oil or mixture containing oil shall be discharged or allowed to escape from a vessel while at the Terminal, the approaches or in the River and Firth of Forth.

No garbage or other materials, either liquid or solid, shall be discharged overboard from a

vessel, but shall be retained in suitable receptacles on board or arrangements made for disposal

ashore. Refer to Section B.8 on "Disposal of Garbage at the Terminal" and to IMO MARPOL

73/78 Annex V. Further information is contained in the "Port Waste Reception Facilities" manual of the Terminal.

(b) Discharge of clean, segregated ballast water overboard is permitted subject to approval and/or

inspection by the Braefoot Bay Supervisor. It is expected that ships will be exercising ballast

water control procedures as described in British Marine Guidance Note MGN 81 and to IMO

Resolution A.868(20).

Forth Ports PLC Harbour Master will be informed if inspection, either before or during discharge,

shows ballast water is contaminated and such discharge shall immediately cease. All ballast water other than that contained in segregated ballast tanks shall be retained on board.

NOTE: DIRTY BALLAST CANNOT BE DISCHARGED AT THIS TERMINAL

(c) Prior to the transfer of any Gasoline, the anti-pollution checklist must be completed (see

Appendix 'B' in checklist booklet) and no leakage or spillage shall be swept or

allowed to leak overboard. Swabs, sawdust or sorbents used for mopping up spillages must be brought ashore for destruction.

(d) Vessels are prohibited from the internal transfer of any oil or slops whilst alongside.

Any leakage or spillage must be reported immediately to the Braefoot Bay Supervisor and

operations suspended until the leakage has been cleaned up to the satisfaction of the Braefoot

Bay Supervisor and the Harbour Master. The Braefoot Bay Supervisor may mobilise resources

to assist in the containment and cleaning of pollution caused by a ship without the authority of

the Master, but in such action he shall be considered to be acting on behalf of the Master and

with his approval.

It is a statutory requirement that any pollution be immediately reported to the Harbour Master.

(e) Venting of Ships' tanks at Anchorage within Port Limits is prohibited under Forth Ports PLC

Byelaws and General Directions.

5 BLANKING OF UNUSED CONNECTIONS/CARGO TANK OPENINGS

Unused cargo and bunker connections must be closed and blanked. Blank flanges shall be fully

bolted, and other types of fittings, if used, properly secured. Blanks should be fabricated from material

commensurate with the associated manifold (i.e. carbon or stainless steel), and approved for pipework

pressure rating. On no account should blanks fabricated from wood, or other material than those

stated, be fitted.

Blanks should only be removed from manifolds once alongside, immediately prior to use. Blanks

should be refitted immediately on completion of loading arm disconnection. The vessel will not be

permitted to sail until manifolds are secured.

All cargo tank lids shall be kept closed and secured at all times.

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ESCRAVOS LPG FSO
Chevron Nigeria Limited
Conditions of Entry into and Use of
Escravos Terminal, Nigeria



Loading Date : _____
 Reference Number : _____

LPG Carrier : _____ Registry : N.I.S.
 Master : E

- 1) All services, facilities and assistance provided by or on behalf of CHEVRON NIGERIA LIMITED (The Company) in or in connection with the Port, whether or not any charge is made by The Company therefore, are provided subject to all applicable laws, by-laws and Harbor Regulations, Safety Regulations and Towage Conditions for the time being in force and to the following further conditions:
 - a) The Services of the Mooring Master(s) are provided on the express understanding and condition that when any Mooring Master furnished by The Company goes on board a vessel for the purpose of assisting such vessel, he becomes for such purposes the servant of the Owner or Charterer of the vessel; and The Company, including its parent companies, subsidiaries, and affiliates, shall in no way be liable for any damage or personal injury, including death, of any nature whatsoever, incurred by any person whomsoever, in any way connected with, contributed by, or resulting from the advice or assistance given or for any action taken by such Mooring Master, whether negligent or otherwise, while on board or in the vicinity of such assisted vessel.
 - b) Similarly, the services of mooring launches and mooring personnel, if any, and the furnishing of mooring lines and hosing-up gear are under the supervision and control of the Mooring Master, and The Company, including its parent companies, subsidiaries, and affiliates, shall in no way be liable for any damage or personal injury, including death, of any nature whatsoever, incurred by any person whomsoever, in any way connected with, contributed to by, or resulting from the performance of these additional services, or furnishing of equipment, whether any of which they are utilized by any vessel.
2. In addition, neither The Company, its parent companies, subsidiaries, or affiliates, nor its or their servants, agents or contractors (in whatever capacity they may be acting), shall be in any way whatsoever responsible for (or liable for any contribution with respect to) any loss, personal injury, including death, damage or delay, from whatsoever cause, including the negligence of The Company or its servants, agents or contractors, arising whether directly or indirectly in consequence of any assistance, advice or instructions whatsoever given or tendered in respect of any vessel, whether by way of tugs, pilotage or berthing services, the provision of navigation facilities, including buoys or other channel markings, or otherwise howsoever. In all circumstances the Master of any vessel shall remain solely responsible on behalf of his Owners for safety and proper navigation of his vessel.
3. While The Company exercises due care to ensure that the berths, premises, facilities, property, gear, craft and equipment provided by The Company, are safe and suitable for vessels permitted or invited to use them, no guarantee, express or implied, of such safety and suitability is given by The Company, nor does The Company guarantee that such berths, premises, facilities, property, gear, craft, and equipment are devoid of defects or fit for the service or use to which it is put, and every vessel shall be and remain at the sole risk of the Owners and Masters thereof; and The Company, including its parent companies, subsidiaries, and affiliates, shall not be responsible (or liable for any contribution) with respect to any loss, personal injury including death, damage, or delays, of any sort whatsoever, that may be sustained whether directly or indirectly by, or occur to, any vessel or to her Owners or her crew or cargo or for any part thereof (whether such cargo is on board or in the course of loading or discharging) by whomsoever and by whatsoever cause such loss, injury, damage, or delay is occasioned, and whether or not it is caused, occasioned, or contributed to, in whole or in part, to any act, neglect, omission or default on the part of The Company, or any servant, agent or contractor of The Company, or by fault or defect in any berth, premises, facilities, property, gear, craft, or equipment of any sort of The Company or its servants, agents or contractors.

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4. The Company will not be responsible for any loss, damage or delay directly or indirectly caused or contributed to by or arising from strikes, lock-outs, or labour disputes or disturbances whether The Company or its servants, agents or contractors are parties thereto or not.
5. If in connection with or by reason of the use by any vessel of any berth, or of any part of The Company's premises, or of any gear or equipment provided by or on behalf of The Company, or any craft, or of any other facilities or property, of any sort whatsoever, belonging to or provided by on behalf of The Company, any damage or injury is caused to such berth, premises, gear or equipment, craft, or other facility or property, or any third party, or any vessels (its Owners crew), from whatsoever cause such damage may arise, and irrespective of whether or not such damage has been caused, occasioned or contributed to, in whole or in part, by the negligence of The Company or its servants, agents or contractors, and irrespective of whether there has been any neglect or default on the part of the vessel or the Owners, in any such event the vessel and the Owners shall hold The Company, its parent companies, subsidiaries and affiliates, harmless from and indemnified without limitation against all such damage and injury and against loss sustained by The Company, its parent companies, subsidiaries or affiliates, consequent thereon.
6. The vessel and her Owners shall hold The Company, its parent companies, subsidiaries and affiliates, and its and their servants, agents and contractors, harmless from and indemnified without limitation against the following whether or not caused, contributed to, or due, in whole or in part, to any act, neglect, omission or default on the part of The Company, its servants, agents or contractors:
- a) All and any action, liabilities, claims, damages, cost, awards and expenses arising whether directly or indirectly out of any loss, damage, personal injury, including death, or delay, of whatsoever nature, occasioned to any third party or any vessel (her Owners and crew), including your vessel and Owners and crew, including but not limited to, that caused or contributed, whether directly or indirectly, by the vessel or any part thereof or by any substance or material leaking or escaping therefrom or by her Master or crew, or by any other servant or agent of the Owners.
 - b) All or any damage, personal injury, including death, delay or loss, of whatsoever nature, occasioned to The Company, its parent companies, subsidiaries and affiliates, or its or their servants, agents, and contractors, arising out of any cause whatsoever including but not limited to, that caused or contributed to, whether directly or indirectly, by the vessel or any part thereof or by any substance or material leaking or escaping therefrom or by her Master or crew or by any other servant or agent of the Owners.
7. These conditions shall be construed according to the Laws of Nigeria and the vessel and her Owners shall submit to the jurisdiction of the Nigerian courts.

RECEIPT AND ACCEPTANCE

S.S./M.V. _____

I hereby acknowledge receipt of the foregoing Conditions of Entry into and Use of Escravos Terminal, Nigeria and accept and agree to be bound by, on behalf of myself, my vessel and her Owners, the terms and conditions set forth therein.

(Time and Date) _____

(Signature) _____



Hazira Port Private Ltd.

HAZIRA (SURAT) PORT

CONDITIONS OF USE BOOK

NAME OF LNG CARRIER:

CARGO NUMBER:

DATE BERTHED:

ISSUE HISTORY

Version no	Description	Date
Ver 0.1	Internal Pre release	01.01.2005
Ver 1.0		01.06.2006
Ver 2.0	Complete review of Sec 2 - CoU of Port Services	05.01.2007
Ver 3.0	New Port Layout introduced	14.03.2007
Ver 3.1	Sec 13-SoF amended, Sec 4-Arrival – Departure Report format amended	08.04.2008

Author or Reviewer:	Procedure Custodian:	Approved by:
Reference Indicator Pilot / Berthing Master	Reference Indicator Harbour Master	Reference Indicator Port Manager
(Capt. A. Basu)	(Capt. S. Kakar)	(Capt. J. Teertstra)

Contents :

- 1. Passage Plan Agreement**
- 2. Condition of Use of Port Services and Facilities**
- 3. Condition of Use of Tug Services**
- 4. Arrival Departure Report**
- 5. Safety Circular**
- 6. Port Information and Safety Requirements**
- 7. Ship / Shore Safety Check List**
- 8. Oil Pollution Avoidance Notice**
- 9. Smoking Notices**
- 10. LNG Carrier S.A.F.E Inspection Report**
- 11. Letter of Protest**
- 12. Garbage Reception Receipt**
- 13. HPPL Statement of Facts**
- 14. Declaration Of Security**

1. PASSAGE PLAN AGREEMENT

Pilot passage/mooring/unmooring plan agreement between Master and Pilot. Following discussed in details using Pilot Passage Card and agreed by the Master for the safe passage:

- Tides, currents, minimum depths in Channel and at Berth, Minimum Under keel clearance in Channel and at berth.
- Master confirms all 1) Navigation equipment 2) Main Engines and Machinery 3) Steering gear 4) Mooring equipment are tested and must be tested and in working condition before any manoeuvring to and from the berth.
- Master must notify the pilot any special conditions or peculiarities such as defective equipment, lines or gears, which might impose special hazards in connection with handling mooring or discharging of cargo.
- Pilot will refuse to berth any vessel with unsatisfactory equipment. Full main engine power must be available for manoeuvring ahead and astern.
- All tanks openings, ullage ports and sighting ports must be closed before berthing/unberthing commences.
- Both anchor stoppers must be in place to prevent accidental release of anchors while transiting the channel between buoys, but they should be ready for immediate deployment.
- Anchors may be required to use in emergency ONLY.
- Tugs to be made fast by Tug's lines decided by Pilot. Normally three tugs are to be made fast i.e.(details of making fast the tugs to be included)
- If required a standby tug will be used for turning around at turning basin / off the berth.
- No mixed moorings allowed.
- Mooring pattern will be as follows: First line to go will be springs, followed by breast lines and head / stern lines. All lines will be passed by heaving line and messenger line.
- Pilot and the Master both have discussed together and satisfied and agreed themselves as to berthing, unberthing and passage plans for the vessel.

MASTER sign _____

PILOT sign _____

**Hazira Port Private Ltd.**

2. CONDITIONS OF USE HAZIRA (SURAT) PORT *(Applicable for LNG vessels only)*

All facilities and assistance of any kind whatsoever provided by the Company or the Company Representatives to LNG vessels visiting the Port for any purpose whatsoever are subject to the following conditions of use ("Conditions"). These Conditions are applicable regardless of whether or not any or all charges / costs are paid or are actually or impliedly due from or on account of any visiting vessels, whether of Indian or foreign flag. Without prejudice to the generality of the foregoing, the following shall be deemed to have been specifically accepted by any vessel visiting the Port regardless of whether such acceptance is specific, in writing or otherwise.

For the purpose of these Conditions the following definitions shall apply:

"Affiliate" means either or both of Hazira LNG Private Limited and Hazira Gas Private Limited, which are companies incorporated under the Companies Act, 1956 having their registered office at 101-103, "Abhijeet-II", Mithakhali Circle, Ahmedabad 380 006, Gujarat, India.

"Company" means the Hazira Port Private Limited a company incorporated under the Companies Act, 1956 having its registered office at 101-103, "Abhijeet-II", Mithakhali Circle, Ahmedabad 380 006, Gujarat, India.

"Company Representative" means (collectively and severally) the Affiliate or any of its or its Affiliates employees, contractors, servants, consultants, advisors, agents or representatives in whatever capacity they may be acting.

"Port" means the Hazira (Surat) Port notified as a minor port under the Indian Ports Act, 1908.

"Port Facilities" means all the infrastructure, equipment and installation at the Port which includes, but is not limited to, channels, channel markings, buoys, jetties, berths lines, gangways and bunkering facilities or the unloading facilities at the regasification terminal of the Hazira LNG Private Limited.

"Port Services" means any service rendered by the Company or Company Representative which includes, but is not limited to, mooring or unmooring or raising or lowering of the loading lines or loading or discharging or otherwise, but excluding towage services which are governed by Clause 3 of the Condition of Use Book.

2.1 The Master of a vessel shall under all circumstances remain responsible on behalf of the Owners for the safety and proper navigation of the vessel at the Port and shall at all times comply with all applicable law, applicable port regulations and directions and instructions issued by the Company and Company Representatives from time to time to the Master.

2.2 Whilst the Company has undertaken all reasonable care, skill and diligence to ensure that Port Services are safe, the Company does not represent or warrant that the Port Services are safe or suitable for any vessel. Any vessel using Port Services at the Port shall do so at its sole and exclusive risk. The Company or Company Representative shall not be responsible for any loss or damage to the vessel, actual or consequential, which is in any manner related to the use of the Port Services regardless of any act, omission, fault or neglect of the Company or the Company Representative, including pilot's neglect, error or mistake. This clause 2.2 shall apply irrespective of whether or not the vessel is within the notified limits of the Port, as such port limits are more particularly identified in the Hazira Port Information Book.

2.3 Whilst the Company has undertaken all reasonable care and diligence to ensure that the Port and Port Facilities are safe, the Company or the Company Representative does not represent or warrant that the Port or the Port Facilities are safe or suitable for any vessel. Any vessel using the Port or the Port Facilities shall use the Port and the Port Facilities at its sole and exclusive risk. The Company or the Company Representative shall not be responsible for any loss or damage to the vessel, actual or consequential, which is in any manner related to the use of the Port and the Port Facilities regardless of any act, omission, fault, neglect, error or mistake of the Company or the Company Representatives.

2.4 All vessels visiting the Port must themselves ensure whether or not they are capable of operating within the physical limitations of the Port's dimensions, unloading arm envelopes and mooring equipment, as such physical limitations, port dimensions etc are more particularly identified in the Hazira Port Information Book.

2.5 Neither the Company nor the Company Representatives shall be responsible for any loss, damage, injury or delay from whatsoever cause arising out of any assistance, advice or instruction whatsoever given / tendered, in writing or otherwise, in respect of any vessel. In all circumstances the Master and/or the Owners shall remain solely responsible for the safety and proper navigation of such vessel.

2.6 Neither the Company nor the Company Representatives shall in any event be responsible for the acts or defaults of any of their employees or servants or agents or of any Government Authority for any loss, damage, injury or delay howsoever caused or arising that may occur to the vessel or her cargo or equipment or personal injury to the Master or any member of her crew whether on board or otherwise whilst visiting the Port.

2.7 Neither the Company nor the Company Representatives shall in any event be responsible or liable for the consequences of war, riots, civil commotions, acts of terrorism or sabotage, strikes, lockouts, disputes, stoppages or labour disturbances (whether the Company or the Company Representatives or their employees are a party thereto or not) or anything done in contemplation or furtherance thereof or delays of any description, howsoever caused or arising, including by the negligence of the Company or the Company Representatives.

2.8 The vessel and Owner shall, jointly and severally, in all circumstances hold harmless and indemnify the Company against all losses, claims, damages, costs and expenses the Company may incur or has incurred arising from:

- (a) any loss suffered by the Company arising out of any damage to the Port or Port Facilities which involves the fault, wholly or partially of the Master or the crew of the vessel, including negligent navigation;
- (b) any loss suffered by the Company arising out of death or injury to the personnel which involves the fault, wholly or partially of the Master or the crew of the vessel, including negligent navigation;
- (c) any loss suffered by third parties, including by Company Representatives, arising out of damage to their property which involves the fault, wholly or partially of the Master or the crew of the vessel, including negligent navigation;
- (d) any loss suffered by third parties, including by Company Representatives, arising out of death or injury to their personnel which involves the fault, wholly or partially of the Master or the crew of the vessel, including negligent navigation;
- (e) any loss suffered by the vessel while at the Port, including any consequential losses and damages, regardless of any act, omission, fault or neglect on part of the Company or Company Representatives.
- (f) any loss suffered due to death or personal injury to the Master, officers or crew of the vessel while at the Port, including any consequential losses and damages, regardless of any act, omission, fault or neglect on part of the Company or Company Representatives.

2.9 If the vessel is or is likely to become an obstruction threat or danger to navigation, operations, safety, health, environment or security of the Port (“a hazard”) the Master and the Owners shall, if required by the Company take immediate action to clear, remove or rectify the hazard in such a manner as the Company may direct. Alternatively, the Company may take such steps itself, as it deems fit and proper in its sole discretion, and the Owner shall be responsible for and indemnify the Company against all costs and expenses associated therewith.

2.10 The aggregate liability of the vessel, Master and Owners to the Company under these Conditions in respect of all claims arising from any one accident or occurrence shall be limited to US\$ 150,000,000 and, to the fullest extent permissible by law, the Owners and their insurers hereby waive any rights they may otherwise have under applicable law or any applicable Convention to limit their liability at any lower limit.

2.11 Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights, which the Company or the Company Representative may have against the Owner or Master of the vessel. The Owner or Master of the vessel, to the fullest extent permissible by law, undertake not to take or cause to be taken any proceedings against the Company or the Company Representative or their personnel, in respect of any negligence or

breach of duty or other wrongful act on their part, but for this present provision, it would be competent for the Owner or the Master so to do.

2.12 The Master of the vessel represents that he is authorized to sign these Conditions and makes this agreement for and on behalf of the Owners of the vessel.

2.13 These Conditions shall be construed in accordance with the laws of India and if so required by the Company, the vessel and her Owners shall submit to the jurisdiction of the Indian Courts.

I, the undersigned, being the Master of;

M.T./ S.S. _____ **Flag** _____

Built _____

Owned / Operated by _____

Do hereby acknowledge receipt of the “**Hazira Port Information Book**” on arrival at the anchorage of the Port and on behalf of the and her Owners, operators and charterers accept the “Conditions of Use” of installations and services at Hazira (Surat) Port” detailed above. I confirm having received the port user’s information book and confirm that its contents are acceptable and binding and that the crew have also read it and are familiar with the same for safe operations at all times.

Master’s Name _____

Master’s Signature _____



3. CONDITIONS OF USE OF TUG SERVICES

THE TUG SERVICES PROVIDED BY THE HAZIRA PORT PRIVATE LIMITED TO THE LNG CARRIER ARE COVERED UNDER THE FOLLOWING CONDITIONS FOR TOWAGE AND OTHER SERVICES.

- 3.1 (a) The agreement between the Company and the Hirer is and shall at all times be subject to and include each and all of the conditions hereinafter set out.
- (b) for the purposes of these conditions:
- (i.)“towing” is any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of or standing by the Hirer’s vessel, and the expressions “to tow”, “being towed” and “towage” shall be defined likewise.
 - (ii.)“vessel” shall include any vessel, craft or object of whatsoever nature (whether or not coming within the usual meaning of the word “vessel”) which the Company through the Tugowner agrees to tow or to which the Company agrees at the request, express or implied, of the Hirer, to render any service of whatsoever nature other than towing.
 - (iii.)“tender” shall include any vessel, craft or object of whatsoever nature which is not a tug but which is provided by the Company for the performance of any towage or other service.
 - (iv.)The expression “whilst towing” shall cover the period commencing when the tug or tender is in a position to receive orders direct from the Hirer’s vessel to commence holding, pushing, pulling, moving, escorting, guiding or standing by the vessel to pick up ropes, wires or lines, or when the towing line has been passed to or by the tug or tender, whichever is sooner, and ending when the final orders from the Hirer’s vessel to cease holding, pushing, pulling, moving, escorting, guiding or standing by the vessel or to cast off ropes, wires or lines has been carried out, or the towing line has been finally slipped, whichever is the later, and the tug or tender is safely clear of the vessel.
 - (v.)Any service of whatsoever nature to be performed by the Company other than towing shall be deemed to cover the period commencing when the tug or tender is placed physically at the disposal of the Hirer at the place designated by the position to receive and forthwith carry out orders to come alongside and shall continue until the employment for which the tug or tender has been engaged is ended. If the service is to be ended at or off a vessel the period of service shall end when the tug or tender is safely clear of the vessel or, if it is to be ended elsewhere, then when any persons or property of whatsoever description have been landed or discharged from the tug or tender and/or the service for which the tug or tender has been required is ended
 - (vi.)The word “tug” shall include “tugs”, the word “tender” shall include “tenders”, the word “vessel” shall include “vessels” the word “Tugowner” shall include “Tugowners”,and the word “Hirer” shall include “Hirers”.
 - (vii.)The expression “tugowner” shall include and persons or body who is either the owner of the tug or tender..
 - (viii.) The expression “Hirer” means the owner or charterer of the vessel
- 3.2 If at the time of making this agreement or of performing the towage or of rendering any service other than towing at the request, express or implied, of the Hirer, the Hirer is not the owner of the vessel referred to herein as “the Hirer’s vessel”, the Hirer expressly represents that he is authorised to make and does make this agreement for and on behalf of the owner of the said vessel subject to each and all of these conditions and agrees that both the Hirer and the Owner are bound jointly and severally by these conditions.
- 3.3 Whilst towing or whilst at the request, express or implied, of the Hirer, rendering any service other than towing, the master and crew of the tug or tender shall be deemed to be the servants of the Hirer and under the control of the Hirer and/or his servants and/or his agents, and anyone on board the Hirer’s vessel who may be employed and/or paid by the the Company or the Tugowner shall

likewise be deemed to be the servant of the Hirer and the Hirer shall accordingly be vicariously liable for any act or omission by any such person so deemed to be the servant of the Hirer.

3.4 Whilst towing, or whilst at the request, either express or implied, of the Hirer rendering any service of whatsoever nature other than towing:-

- (a) The Company or the Tugowner shall not (except as provided in Clause 3(c) and (e) hereof) be responsible for or be liable for:
 - (i) Damage of any description done by or to the tug or tender; or done by or to the Hirer's vessel or done by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or to or by any other object or property
or
 - (ii) Loss of the tug or tender or the Hirer's vessel or any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or any other object or property;
or
 - (iii) Any claim by a person not a party to this agreement for loss or damage of any description whatsoever;
arising from any cause whatsoever, including (without prejudice to the generality of the foregoing) negligence at any time of the Company or the Tugowner their servants or agents, unseaworthiness, unfitness or breakdown of the tug or tender, its machinery, boilers, towing gear, equipment, lines, ropes or wires, lack of fuel, stores, speed or otherwise and
- (b) The Hirer shall (except as provided in Clause 43(c) and (e) be responsible for, pay for and indemnify the Company and the Tugowner against and in respect of any loss or damage and any claims of whatsoever nature or howsoever arising or caused, whether covered by the provisions of Clause 3(a) hereof or not, suffered by or made against the Company or the Tugowner and which shall include, without prejudice to the generality of the foregoing, any loss or damage to the tug or tender or any property of the Company or the Tugowner even if the same arises from or is caused by the negligence of the Company, the Tugowner or their servants or agents.
- (c) The provisions of Clause 3.4(a) and 3.4(b) hereof shall not be applicable in respect of any claims which arise in any of the following circumstances:-
 - (i) All claims which the Hirer shall prove to have resulted directly and solely from the personal failure of the Company or the Tugowner to exercise reasonable care to make the tug or tender seaworthy for navigation at the commencement of the towing or other service. For the purpose of this Clause the Company's or Tugowner's personal responsibility for exercising reasonable care shall be construed as relating only to the person or persons having the ultimate control and chief management of the Company's or Tugowner's business and to any servant (excluding the officers and crew of any tug or tender) to whom the Company or the Tugowner has specifically delegated the particular duty of exercising reasonable care and shall not include any other servant of the Company or the Tugowner or any agent or independent contractor employed by the Company or the Tugowner.
 - (ii) All claims which arise when the tug or tender, although towing or rendering some service other than towing, is not in a position of proximity or risk to or from the Hirer's vessel or any other craft attending the Hirer's vessel and is detached from and safely clear of any ropes, lines, wire cables or moorings associated with the Hirer's vessel. Provided always that, notwithstanding the foregoing, the provisions of Clause 3(a) and 3(b) shall be fully applicable in respect of all claims which arise at any time when the tug or tender is at the request, whether express or implied, of the Hirer, his servants or his agents, carrying persons or property of whatsoever description (in addition to the Officers and Crew and usual equipment of the tug or tender) and which are wholly or partly caused by or arise out of the

presence on board of such persons or property or which arise at anytime when the tug or tender is proceeding to or from the Hirer's vessel in hazardous conditions or circumstances.

(d) Notwithstanding anything hereinbefore contained, neither the Company nor the Tugowner shall under no circumstances whatsoever be responsible for or be liable for any loss or damage caused by or contributed to arising out of any delay or detention of the Hirer's vessel or of the cargo on board or being loaded on board or intended to be loaded on board the Hirer's vessel or of any other object or property or of any person, or any consequence thereof, whether or not the same shall be caused or arise whilst towing or whilst at the request, either express or implied, of the Hirer rendering any service of whatsoever nature other than towing or at any other time whether before during or after the making of this agreement.

(e) Notwithstanding anything contained in Clauses 3(a) and (b) hereof the liability of the Company or the Tugowner for death or personal injury resulting from negligence is not excluded or restricted thereby.

3.5 Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Company or the Tugowner may have against the Hirer including, but not limited to, any rights which the Company or the Tugowner or his servants or agents may have to claim salvage remuneration or special compensation for any extraordinary services rendered to vessels or anything aboard vessels by any tug or tender. Furthermore, nothing contained in these conditions shall limit, prejudice, or preclude in any way any right, which the Company or the Tugowner may have to limit his liability.

3.6 The Company or the Tugowner will not in any event be responsible or liable for the consequences of war, riots, civil commotions, acts of terrorism or sabotage, strikes, lockouts, disputes, stoppages or labour disturbances (whether he be a party thereto or not) or anything done in contemplation or furtherance thereof or delays of any description, howsoever caused or arising, including by the negligence of the Company or the Tugowner for the benefit of his servants or agents.

3.7 The Hirer of the tug or tender engaged subject to these conditions undertakes not to take or cause to be taken any proceedings against any servant or agent of the Company or the Tugowner, in respect of any negligence or breach of duty or other wrongful act on the part of such servant or agent which, but for this present provision, it would be competent for the Hirer so to do and the owners of such tug or tender shall hold this undertaking for the benefit of their servants and agents.

3.8 The agreement in relation to towage shall be governed under Indian Law.

Master Name: _____

Signature: _____

Pilot Name: _____

Signature _____

CONDITIONS OF USE OF THE TERMINAL OF KHARG

All facilities and assistance of any sort whatsoever provided by the Company in or in connection with the port, whether or not any charge is made by the Company therefor, are provided subject to the following conditions.

1. Neither the company nor its servants (in whatever capacity they may be acting) shall be responsible for any loss, damage or delay from whatsoever cause arising in consequence of any assistance, advice or instructions whatsoever, given or tendered in respect of any vessel, whether by way of pilotage or berthing services, the provision of navigational facilities, including buoys or other channel markings, or otherwise howsoever, in all circumstances the Master of any vessel shall remain solely responsible on behalf of his Owners for the safety and proper navigation of his vessel.
2. While the company takes every care to ensure that the berths, premises, facilities, property, gear, craft and equipment provided by the Company are safe and suitable for vessels permitted or invited to use them, no guarantee of such safety or suitability is given and the Company shall not be responsible for any loss, damage or delay of any sort that may be sustained by or occur to any vessel or her Owners or her cargo or any part thereof (whether such cargo is on board or in the case of loading or discharging) by whomsoever or by whatsoever cause such loss, damage or delay is occasioned and whether or not it is due in whole or in part to any act, neglect, omission or default on the part of any Company's berths, premises, facilities, property, gear, craft or equipment of any sort.
3. The Company shall not be responsible for any loss, damage or delay directly or indirectly caused by or arising from strikes, lockouts or labour disputes or disturbances whether the Company or its servants are parties thereto or not.
4. If in connection with or by reason of the use by any vessel of any berth or of any part of the Company's premises or of any gear or equipment provided by the Company or of any craft or of any other facility or property, of any sort whatever, belonging to or provided by the company any damage is caused to any such berth, premises, gear or equipment, craft or other facility or property from whatsoever cause such damage may arise, and irrespective of whether or not such damage has been caused or contributed to by the negligence of the Company or of its servants, and irrespective of whether there has been any neglect or default on the part of the vessel or the Owners, in any such event the vessel and the Owners shall hold the Company harmless from and indemnified against all such damage and against all loss sustained by the Company consequent thereon.
Further, the vessel and her Owners shall hold the company harmless from and indemnified against all and any claims, damages, costs and expenses arising out of any loss, damage or delay caused to any third party by the vessel or by her Master or crew or by any other servant or agent of the Owners.
5. In the event of any escape or discharge of oil or oily mixture from the vessel or from any loading arm, hose or other loading device connected to the vessel the company shall have the right to take any measures it deems fit firstly to avoid any fire hazard and secondly to clean-up the pollution resulting from such escape or discharge and to recover the full cost thereof from the vessel or her Owners. Such cost shall constitute a debt payable by the vessel or her Owners to the Company. Further, the vessel and her Owners shall hold the Company harmless from and connection with such escape or discharge.

6. If the vessel sinks, strands or is abandoned or in the opinion of the Company is or is likely to become an obstruction or danger in any part of the port or its approaches, the Company shall have the right :
- (a) At any time to require the vessel and her Owners at their expense to mark light watch and/or to raise, remove, blow up or destroy the vessel and/or her cargo or the wreck thereof, at such time and in such manner as the Company shall think fit;
 - (b) itself to take all or any of the said measures as in its absolute discretion it may think fit, if it appears to the Company at any time that such measures ought to be taken forthwith or as soon as practicable, or that the vessel and her Owners are unable or unwilling to comply promptly or effectively with any requirement made under (a) above.

The full amount of the expenses incurred by the Company in taking such measures shall constitute a debt due from the vessel or her Owners to the Company and/or the Company may reimburse itself for such expenses or any part thereof by selling the vessel or the wreck thereof after raising or removal, in such manner and on such terms as the Company shall think fit and retaining the amount of such expenses or any part thereof out of the net proceeds of such sale.

7. The Master or the person in charge of the vessel shall:
- (a) ensure that any Safety Regulations, Port Regulations and other instructions issued by the Company are complied with at all times;
 - (b) from time to time place, transport and remove the vessel at or to such jetty or berth as the Harbour Master or any servant of the Company in charge of the premises and property of the Company Shall reasonably require for the proper and efficient use of the same.
8. The expression "The Company" in these conditions means National Iranian Oil Company which is the owner of the port.
9. These conditions shall be governed by Iranian Law, and the parties hereto shall submit to the jurisdiction of the Iranian Courts, unless otherwise mutually agreed.

S.S. / M.V.

On behalf of the Owners of the vessel . SIGNED & STAMPED.....

I accept the above terms and conditions.



CONDITIONS OF USE OF KUWAIT OIL COMPANY (K.S.C.) TERMINAL FACILITIES

In addition to any other conditions which may be separately prescribed by regulation, law or enactment, all facilities and assistance of any sort whatsoever provided by the Kuwait Oil Company (K.S.C) ("KOC"), in or in connection with and in consideration of the use of KOC's terminal facilities, are provided subject to the following conditions:

1. Neither KOC nor its servants (in whatever capacity they may be acting) shall be responsible for any loss, damage, claims or delay from whatsoever cause arising in consequence of any assistance, advice or instructions whatsoever given or tendered in respect of the vessel mentioned below ("Vessel"), whether by way of pilotage, berthing or un-berthing services, the provision of navigational facilities, including buoys or other channel markings, or otherwise howsoever. In all circumstances the Master of the Vessel, the Vessel's owners, charterers, managers or operators shall remain solely responsible for the safety and proper navigation of the Vessel.
2. While KOC takes reasonable care to ensure that the berths, premises, facilities, property, gear, craft and equipment, provided by it are safe and suitable for the Vessel permitted or invited to use them, no guarantee of such safety or suitability is given, and KOC shall not be responsible for any loss, injury, damage, claims or delay of any sort that may be sustained by or that occur to the Vessel or its owners, charterers, managers, operators or cargo or any part thereof (whether such cargo is on board or in course of loading or discharging), by whomsoever and by whatever cause such loss, injury, damage, claims or delay is occasioned and whether or not it is due in whole or in part to any act, neglect, omission or default on the part of any servant or agent of KOC or by any fault or defect in any of KOC's berths, premises, facilities, property, gear, craft or equipment of any sort.
3. KOC shall not be responsible for any loss, injury, damage, claims or delay directly or indirectly caused to the Vessel, the Vessel's owners, charterers, managers or operators by or arising from strikes, lockouts or labour disputes or disturbances whether KOC or its servants are parties thereto or not.
4. If in connection with or by reason of the use by the Vessel, of any berth or of any part of KOC's premises or of any gear or equipment or of any craft or of any other facility or property, of any sort whatsoever, belonging to or provided by KOC, any damage is caused to any such berth, premises, gear, equipment, craft or other facility, property or pollution to the environment in or adjacent to the port including the territorial waters of Kuwait, from whatsoever cause such damage may arise, and irrespective of whether or not such damage has been caused or contributed to by the negligence of KOC or of its servants, and irrespective of whether there has been any neglect or default on the part of the Vessel or its owners, charterers, managers or operators and in any such event the Vessel and its owners, charterers, managers or operators shall hold KOC harmless from and indemnified against all such damage and against all loss sustained by KOC as a consequence. Further, the Vessel and its owners, charterers, managers or operators shall jointly and severally hold KOC harmless from and indemnified against all and any claim, damages, costs (including legal costs), and expenses arising out of any loss, injury, death, damage or delay caused to any third party by the Vessel or by its Master or crew or by any other servant or agent.
5. If the Vessel sinks or grounds or otherwise becomes, in the opinion of KOC, an obstruction or danger in any part of the port or the approaches thereto and the owners, charterers, managers or operators of the Vessel fail to remove the obstruction or danger within a period to be stipulated by KOC, KOC shall be empowered to take any steps it may deem necessary to remove the obstruction or danger and any expenses of such removal shall jointly and or severally be recoverable from the Vessel, its owners, charterers, managers or operators.
6. All disputes between KOC and the owners, charterers, managers or operators of the Vessel arising out of these conditions shall at the sole option of KOC be exclusively governed according to the laws of Kuwait and be dealt with exclusively by the Kuwaiti courts or by the laws of England and be dealt with by the English courts and the Vessel and its owners, charterers, managers or operators shall submit to either of the jurisdictions and laws that KOC elects to choose.

I hereby declare that I accept the above Conditions of Use of Kuwait Oil Company (K.S.C.) Terminal Facilities.

"THIS FORM SHOULD BE COMPLETED AND HANDED TO THE PILOT BEFORE HE LEAVES THE SHIP"

GENERAL MANAGER OPERATIONS

PORT RASHID

DP WORLD
MASTER'S REPORT
DUBAI

1. Name of Ship
Voyage Number
Nationality
2. Port of Registration
Agent in Dubai
Master
3. Number of Crew
Gross Registered Tons
Net Registered Tons **Higher Tonnage To be Entered** DWT :
4. Overall Length
Breadth
Draft on Arrival For'd Aft
5. Arrived Dubai Pilot Station Date Time
6. Berthed Port Rashid Date Time
7. Last Port of Call
Date of Departure
Next Port to Call
Date Due
8. Cargo to be discharged at Dubai.

LANDED DUBAI
LOADED DUBAI

Container's (Off) Nos. On Nos.
Ro/Ro Nos. Vehicles Nos.
General Cargo B/L Tons Weight
Passengers Deck Deck
Cabin Cabin
Livestock Nos. :
Mail Bags Nos. :

9. Undertaking in respect of Dangerous Goods on Board

I, the undersigned, being the Master/Owner/Agent of the above vessel hereby undertake to arrange for the strict and continuous supervision of the place where the undermentioned Dangerous Goods are stowed on board the above named ship, to have hoses rigged and to take all necessary measures and precautions for dealing promptly with an outbreak of fire and to employ competent watchmen, night and day to stand by the said place whilst the ship is in Dubai Territorial Waters.

Master to Sign Overleaf

GOVERNMENT OF DUBAI

PORT AND CUSTOMS DEPT.

CONDITIONS OF USE OF ANY PREMISES AND OR PROPERTY
INCLUDING ANY BERTH, DOCK OR ANY QUAY, WORKS
EQUIPEMENT OR GEAR OF ANY SORT CONNECTED WITH
PORT RASHID WHETHER OR NOT A CHANCE IS MADE.

The Government of Dubai and those acting under its authority shall not be liable for and the users undertake to bear any liability and or loss what-so-ever, in connection with the premises and or property or service, arising from or during the period of or directly or indirectly attributable to the service for which the premises and or property is used from what-so-ever cause arising including damage and or loss and or delay occasioned to and sustained by the vessel for whose purpose the premises and or property is used and or her cargo and or the premises and or the property and or other vessels and or cargo and or other property ashore or afloat or fixed or movable and loss of life of and or personal injury to any person or persons what-so-ever, and or any legal liability, notwithstanding that all or any of these may be due to defect and or unseaworthiness of the premises and or property and or machinery and or any gear and or appliances none of which is in any way warranted as to fitness for the service and not-with-standing that all or any of the foregoing whether cause or effect or due to any acts what-so-ever, including omissions and or negligence and or default and or error of the servants and or Agents or any person authorised by His Highness the Ruler of Dubai, and or of any other persons and or bodies and or authorities what-so-ever.

CONDITIONS BINDING UPON ALL USERS OF

PORT RASHID DUBAI

Any person, vessel, ship, boat, tug, lighter, launch, raft, motor vehicle, lorry, truck, or other craft or conveyance of every kind (herein after called the "User") whether by land or by sea and for whatever purpose entering upon or using or making use of the harbour premises at Port Rashid, Dubai, or any part thereof or any or all of the services or facilities thereof or therein, whether or not in consideration of any charge general or special made or payable therefore, does so entirely at their own risk and expressly upon and subject to the following conditions namely:

- that except as hereinafter expressly stated in para (b) below, neither the Government of His Highness the Emir of Dubai nor the Port Operators appointed thereby nor their nor either of their servants or agents shall in any manner or to any extent be liable or responsible for any loss or damage whatsoever and by whomsoever caused and whether arising as a result of negligence or otherwise howsoever to any person or property;
- that the Port Operators shall be responsible for any goods brought into the harbour premises and delivered to them only from the time when they have actually taken delivery thereof and have issued their official receipt therefore and only in accordance with the condition of such goods as stated on the face of such receipt;
- that the User shall be wholly liable and responsible for, and shall make good or shall make proper and adequate compensation for, any loss or damage directly or indirectly caused by them or their servants or agents to any person or property whatsoever and whether any such person is the servant or agent of, or such property is owned by or belongs to the Government aforesaid or otherwise Port Operators or any user of the harbour premises or otherwise and that the User shall be liable to detention until sufficient security therefore shall have been provided by them;
- that without prejudice to the foregoing while the User is within or about or using or making use of the harbour premises or any part thereof or any of the services or facilities aforesaid, they shall at all times and in every respect be subject to the control and direction of the Port Operators and shall observe, obey, abide by and comply with all rules, regulations, orders and instructions and other what-so-ever made or given by the Port Operators; and
- that the foregoing shall not be modified, varied or waived to any extent except in writing under the hand of a duly authorised officer of the Port Operators.

CONDITIONS OF TUG HIRE

- On the employment of a tug the Master and Crew thereof shall become the servants of and be identified with the hirer and shall be under the control of the hirer or his servants or Agents, and any person on board the hirer's ship, who may be employed and /or paid by the Port shall be deemed to be the servant of the hirer.
- The Port shall not bear or be liable for damage of any description done by or to the tug, or done by or to the hirer's ship, or for any personal injury or loss of life, arising from any cause, unseaworthiness, unfitness or breakdown of a tug, its machinery, towing gear, equipment or hawsers lack of fuel, stores or speed, or otherwise, and the hirer shall pay for all loss or damage and personal injury or loss of life and shall also indemnify the Port against all consequences thereof and the Port shall not, whilst at their request expressed or implied of the hirer render if service other than towing, be held responsible for any damage to the hirer's ship and the hirer shall indemnify the Port against any claim by a third party (other than a member of the crew of the tug) for personal injury or loss of life.

Provided that such liability for such loss or damage as herein prescribed is not caused by want of reasonable care on the part of the Port to make its tugs seaworthy for the navigation of the tugs during the towing or their services. The burden of proving any failure to exercise such reasonable care, shall lie on the Owner of the tow.

- For the purpose of these terms and conditions, the word "Employment" shall be deemed to cover the period commencing when the tug is in a position to receive orders direct from the ship vessel or craft it to be towed or transported to pickup ropes or lines or when the tow rope has been passed to or by the tug whichever is the sooner and ending when the final orders from the ship, vessel or craft so towed or transport to cast off ropes or lines have been carried out or the tow rope has been finally slipped and the tug is safely clear of the ship, vessel or craft whichever is the later. Towing or transport includes any operation in connection with holding, pushing or moving the ship, vessel or craft.

N.B. IMPORTANT:-

THE PORT AUTHORITY RESERVES THE RIGHT TO
BERTH OTHER VESSELS ALONGSIDE VESSELS BERTHED
ON MAIN QUAYS SHOULD THE OCCASION ARISE AND
SUBJECT TO SUITABLE INDEMNITIES.

VESSELS REQUIRING TO IMMOBILISE MAIN ENGINES
SHOULD OBTAIN PRIOR PERMISSION FROM THE
HARBOUR MASTERS OFFICE.

I hereby acknowledge that I have read, understood
and accept the foregoing.

MASTER

Signature

DUBAI

DATE: / / 200

M V/S.S. _____



Marathon E.G. Production Limited

Punta Europa Terminals

Berth 1

Information for Shipmasters

Version: 2.06

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Exhibit A – Master's Acknowledgement

This document does not conform to the MEGPL document format as it is intended for one-off issue to individual tanker Masters on their arrival at the Terminal.

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INTRODUCTION

This booklet is intended to give information to visiting vessels concerning the conditions of use, operation, and regulations pertaining to the Punta Europa Terminal.

The Terminal is operated by Marathon Production E.G. Limited, who will be referred to hereafter as the "Company".

The Terminal, situated off the North Coast of Bioko Island, Equatorial Guinea, consists of two Conventional Buoy Mooring (CBM) arrangements. There are facilities for the export of Condensate, Propane, Butane and Methanol from the onshore process plants of Marathon EG Production Limited, Alba Plant LLC and the Atlantic Methanol Production Company.

The booklet is not intended to take the place of any official publications with respect to the waters and areas to which it pertains. It is also not intended to vary or override in any way the normal duties and responsibilities of Masters in regards to the safety and handling of their vessels, or to conflict with established standards of good marine practice.

This Booklet will be revised and updated whenever necessary. While every effort has been made to ensure the accuracy of the contents, the Company does not accept any responsibility for any omissions or errors or for the consequences of using the booklet. Specifically, the plans and diagrams given are not to be used for the navigation of ships approaching, leaving, or navigating within the terminal area.

Notwithstanding the foregoing or any provisions of this booklet, the Company may take whatever measures may be necessary to prevent hazards to human safety and health, to property, and to the environment that may arise from any activity concerning all or part of the terminal.

Vessels will have received from the Owners copies of the Punta Europa Marine Terminal Manual, of which this booklet is an extract.

Prior to entering the Terminal, Master will be asked to return the "Master's Acknowledgement" set out at Exhibit A hereto certifying that as agent for the Owners he agrees to comply with the Punta Europa Marine Manual, this booklet and the Conditions of Use herein, and such documents will form a contract between the Company and the Owners.

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CONDITIONS OF USE OF THE PUNTA EUROPA TERMINAL

General

All facilities and assistance of any sort provided by the Company in connection with the Punta Europa Terminal, whether or not any charge is made by the Company, are provided subject to the following conditions:

Assistance, Advice or Instruction

Neither the Company, or any associated company, or other owner of property used in conjunction with the Punta Europa Terminal, nor its agents and servants (in whatever capacity they may be acting), shall be responsible for any loss, injury, damage or delay from whatsoever cause arising in consequence of assistance and advice or instruction whatsoever given or tendered in respect of any vessel whether by way of pilotage, berthing services or the provision of navigational facilities including buoys, leads, or otherwise.

In all circumstances the Master of any vessel shall remain solely responsible on behalf of his owners for the safe and proper navigation of the vessel. While the Pilot/Loading Master is supplied by the Company, he will be supplied on the condition that he becomes the agent and servant of the Master of the vessel in every respect. When the assistance of support vessels is requested or used by the Master e.g. tugs, pilot boats, mooring launches etc., the support vessel crew thereof shall, in the performance of the services rendered to the vessel become, and be deemed to be, agents and servants of the owners of the vessel being assisted.

If any vessel sinks, grounds, or otherwise becomes in the opinion of the Company an obstruction or danger in any part of the terminal or the approaches thereto, and the owner of the vessel fails to remove the obstruction or danger within a period stipulated by the Company, the Company shall be empowered to take any steps it may deem necessary to remove the obstruction or danger. Any expenses of such removal shall be recoverable from the owner of the vessel.

Use of Sea berths, Loading Lines, Facilities, Gear and Equipment

While the Company has taken all reasonable care to ensure that the berths, loading lines, facilities, gear and equipment provided by the Company are safe and suitable for vessels permitted to use them no guarantee of such safety or suitability is given.

The Company shall not be responsible for any loss, damage or delay directly or indirectly caused by, or arising from, strikes, labour disputes or disturbances whether the Company or its agents are parties thereto or not.

The Master or the person in charge shall, from time to time, place, transport, and remove the vessel at or from the berth as the Pilot/Loading Master or any servant of the Company in charge of the Company property shall reasonably require for the proper and efficient use of the same.

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Legal Provisions

1. For the purposes of these Conditions of Use, the following words shall have the following meanings.

"Affiliate" means, in relation to any member of the Company Group, any company which is a subsidiary of such member or a company of which such member is a subsidiary or a company which is another subsidiary of a company of which such member is a subsidiary and the expression "subsidiary" shall have the meaning given to it by Section 736 of the Companies Act 1985 as amended by Section 144 of the Companies Act 1989;

"Company Group" means Company, Marathon E.G. International Limited, Samadan of North Africa, Inc, Compania Nacional de Petroleos de Guinea Ecuatorial, Alba Plant LLC and Atlantic Methanol Production Company LLC;

"Company Indemnity Group" means

- (a) each member of the Company Group and its employees, officers and agents;
- (b) the Affiliates of each member of the Company Group and their respective employees and officers;
- (c) the contractors and sub-contractors of each member of the Company Group and their respective employees and officers;
- (d) the contractors and sub-contractors of the Affiliates of each member of the Company Group and their respective employees and officers;

and, for the avoidance of doubt, a reference to the "Company Indemnity Group" shall be a reference to all or any member of the "Company Indemnity Group";

"Losses" means any claims, actions, demands, losses, liabilities, damages, costs and/or expenses (including legal fees on a full indemnity basis and sums by way of settlement or compromise) of whatever nature;

"Offshore Facilities" means any part of the Terminal physically situated offshore;

"Owners" means the owners or managers (as relevant) of any vessel using the Terminal;

"Terminal" or "Marine Terminal" means all vessel mooring facilities, anchors, buoys, pipelines, loading hoses, PLEMS, vessels, storage tanks, plant and related equipment owned by the Company Group and located or to be located onshore or offshore the northeast and northwest corner of Punta Europa on the Island of Bioko, Equatorial Guinea and commonly known as the Punta Europa Marine Terminal, but shall not include the onshore facilities commonly known as the LPG Plant, the Condensate Plant, the Methanol Plant, the LNG Terminal or the LNG berth;

2. Indemnities

2.1 Liability for damage to Terminal, pollution and personal injury to Company Indemnity Group.

- (a) Subject to (b) below, the Owners shall be responsible for, and shall indemnify and hold the Company Indemnity Group harmless from and against, any Losses arising out of or in connection with;
 - (i) physical loss or damage to the Offshore Facilities;
 - (ii) pollution (including clean up cost); and
 - (iii) personal injury, industrial illness, death or damage to personal property of any employee, officer, agent, contractor, sub-contractor of the Company Indemnity Group,

arising out of or in connection with the use of the Terminal by the vessel, howsoever caused, even where caused by the negligence or breach of duty of the Company Indemnity Group.

- (b) In respect of any vessel carrying LPG:

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- (i) the liability of the Owners under paragraph 2.1(a) above shall be limited to US\$50 million or such higher amount as is available by way of insurance coverage from a recognised P&I club under usual P&I club rules covering the liability of a LPG carrier while in or near docking facilities; and
- (ii) paragraph 2.1(a) above shall not apply where the Losses arise as a direct result of the sole fault of the Company Indemnity Group.

2.2 Liability for personal injury of Owners, Cargo and Vessel

The Owners shall be responsible for, and shall indemnify and hold the Company Indemnity Group harmless from and against any Losses arising in connection with:

- (i) personal injury, industrial illness, death or damage to personal property or any employee, officer, agent, contractor, sub-contractor of the Owners; and
- (ii) physical loss or damage to the vessel or the cargo

arising out of or in connection with the use of the Terminal by the vessel, howsoever caused, even where caused by the negligence or breach of duty of the Company Indemnity Group.

2.3 Third Party Rights

- (a) Any relief from liability, indemnity, or benefit in favour of the Company Group is intended to be enforceable, in accordance with its terms, by any member of the Company Group by virtue of the Contracts (Rights of Third Parties) Act 1999.
- (b) Except as provided in 2.3(a), no provision of this Regulation is intended to confer any benefit, nor be enforceable by any person who is not a party by virtue of the Contracts (Rights of Third Parties) Act 1999.
- (c) Notwithstanding (b) above, the above indemnities may be rescinded, amended or varied by the Company without notice to or the consent of any third party even if, as a result, that third party's right to enforce a terms of the indemnities will be varied or extinguished.

2.4 Vessel Insurance

The Owners shall ensure that any vessel using the Terminal shall have in place P&I insurance placed with one of the leading London or international P&I associations which is a member of the International Group of P&I Clubs. In respect of any vessel loading LPG, the terms on which such insurance is placed shall include coverage in respect of any one incident that results in damage to the Offshore Facilities in an amount of not less than USD fifty million (US\$50 million) or such higher amount of insurance coverage as is available from a recognised P&I club under usual P&I club rules covering the liability of an LPG carrier while in or near docking facilities.

2.5 Governing Law

This Manual shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.

2.6 Acceptance by Use

Prior to entering the Terminal, the Master, as agent for the Owners, shall sign and return the Master's Acknowledgement attached as Exhibit A hereto, acknowledging his agreement to be bound by the Conditions of Use, the Information to Shipmasters Booklet and relevant provisions of the Punta Europa Marine Terminal Manual.

Use of the Terminal (including use of services) shall constitute acceptance by the Owners of the Conditions of Use, Information to Shipmaster's booklet and the Punta Europa Marine Terminal Manual regardless of whether the Master has executed the Master's Acknowledgement.

**APPENDIX 7: Conditions of Use (COU)**

All facilities and assistance of any kind whatsoever provided by Oman LNG L.L.C and/or (hereinafter collectively and severally referred to as 'Company' which term shall be deemed to include their respective servants, agents and contractors including production sharing contractors and their affiliates in whatever capacity they may be acting) to vessels calling at the Qalhat LNG Terminal (including Qalhat, its anchorage and approaches associated therewith and the liquefaction plant, terminals or facilities therein, collectively hereinafter called "the Port") whether charged for or not by the Company, are provided subject to the following Conditions (whether or not a copy of the same has been signed):

1. All vessels nominated for this Port must be capable of operating within the physical limitations of the Terminal's berth dimensions, loading arm envelopes and mooring equipment as detailed in the Terminal Guidelines and Procedures or as advised by the Terminal from time to time.
In addition to any other conditions which may be prescribed by regulation, law or enactment, any and all facilities and assistance of any sort whatsoever provided by the Company in connection with the Port and Terminal facilities whether or not any charge is made by the Company therefore, are provided subject to the following conditions:
 - (a) The Master of any vessel shall in all circumstances remain solely responsible on behalf of his owners for the safety and proper navigation of his vessel, and shall comply with the Port Regulations at all times.
 - (b) Neither Company or its servants, agents or contractors (in whatsoever capacity they may be acting) shall be responsible for any loss, damage or delay arising from the use of the Port or its berths by any Vessel including but not limited to any assistance, advice or instructions given or tendered in respect of any Vessel, whether by way of pilotage or berthing services, the provision of navigational facilities, including buoys or other channel markings or otherwise, even if such loss, damage or delay shall have been caused wholly or partly by the negligence or other default of either Company, its servants, agents or contractors.
 - (c) If in connection with any use by any vessel of any berth or jetty or of any part of the Company's premises, or of any gear or equipment provided by the Company, or of any craft or of any other facility or property of any sort whatsoever, belonging to or provided by the Company, any loss of, or damage is caused to any such berth, jetty, premises, gear or equipment, craft or other facility or property, or injury or death to any person employed on the premises, due to whatever reason and irrespective of whether there has been any negligence or default on the part of the vessel or the owners, their servants agents or contractors, in any such event the vessel and owners shall hold the Company harmless from and indemnified against all loss or damage and against all such loss or damage and against all loss sustained by the Company consequent thereon.
 - (d) Further, the Vessel and her Owners shall hold the Company harmless from and indemnified against all and any claim, damages, costs and expenses arising out of any loss, injury, damage caused to any third party by the Vessel or by her master or crew or by any other servant or agent of the owners.
 - (e) The Company shall use reasonable endeavours to ensure that the Port is safe and suitable for Vessels, but no guarantee, undertaken or warranty of such safety suitability is given and none shall be implied.
 - (f) The Company shall not be liable for any demurrage, loss claims or demands whatsoever resulting from or relative to any omission by the Government of Oman or representatives thereof.



- (g) The benefit of any relief or limitation of liability, hold harmless or indemnity under the foregoing provisions shall extend to any associated company or co-venturer of the Company.
- (h) These conditions shall be governed by Omani law and if so requested by the Company, the Vessel and its Owners shall submit to the jurisdiction of the Omani courts .

ACKNOWLEDGEMENT

Name of vessel: _____

As Master of the above named vessel I acknowledge for and on behalf of the Vessels Owners and Operators, that the above Conditions of Use, of the Qalhat LNG Terminal govern the use by such vessel of the said Port.

Signed: _____

Master,
For Owners and Operators

Dated: _____



مدينة راس لفان الصناعية
RAS LAFFAN INDUSTRIAL CITY

CONDITIONS OF USE PORT OF RAS LAFFAN [Applicable to LNG Tankers Only]

I, _____ the Master ("Master")
of the ship _____ ("Ship"),
owned by _____ ("Owner"),
whose address is at _____,

hereby acknowledge receipt of these conditions of use ("Conditions of Use") of the Port of Ras Laffan Port ("Port") and a copy of the Ras Laffan Port Regulations ("Port Regulations"), and in consideration for permission to use the Port, hereby agree to be bound by the terms and conditions of these Conditions of Use, the Port Regulations and such other laws, rules and regulations applicable in the Port as may be issued by the Port Management or agency of the Government of the State of Qatar.

1. The definitions appearing in the Port Regulations are incorporated herein by reference and the following definitions are applicable:

"Company" means Qatar Petroleum ("QP") and its affiliated companies operating at the Port, including their respective directors, officers, agents, employees and servants;

"Port Facilities" mean all infrastructure, equipment and installations at the Port which are owned, controlled or operated by the Company, whether fixed or movable, including the channel, channel markings, buoys, jetties, berths, lines, gangways, water craft, bunkering and loading facilities;

"Port Management" means QP; and,

"Port Services" means any service tendered or provided by the Port Management to the Ship, including pilotage, towage, tug assistance, mooring or other navigational services, whether for consideration or free of charge.

2. The Master shall be responsible, at all times and under all circumstances, for the safe and proper operation and navigation of the Ship. Whilst the Company shall exercise reasonable care, skill and diligence to ensure the proper rendering of Port Services, the Company makes no warranty with respect thereto and any use thereof shall be at the sole risk of the Master and the Owner. The Company shall not be responsible for any loss or damage to the Ship, actual or consequential, which is related to Port Services provided to the Ship regardless of any act, omission, fault or neglect of the Company, including pilot's neglect, error or mistake.

3. Whilst the Company has taken reasonable care to ensure that the Port Facilities are safe and suitable, the Company makes no warranty with respect thereto and any use thereof shall be at the sole risk of the Master and the Owner. The Company shall not be responsible for any loss or damage to the Ship, actual or consequential, which is related to the use of the Port Facilities by the Ship regardless of any act, omission, fault or neglect on the part of the Company.
4. The Company shall not be responsible for the acts or omissions of its servants or agents relating to any loss or damage to the Ship, or any loss or injury suffered by the Master, officers or crew.
5. The Company shall not be responsible to the Ship for any loss related to strikes or other labour disturbances whether the Company or its servants or agents are parties thereto or not.
6. The Master and the Owner shall, in all circumstances, hold harmless and indemnify the Company against any claim, cost or expense arising from:
 - (i) any loss suffered by the Company with respect to damage to the Port Facilities or injury to its personnel which is related to the use of the Port by the Ship and which involves the fault, wholly or partially, of the Master, officers or crew, including negligent navigation;
 - (ii) any loss suffered by third parties with respect to damage to their property or injury to their personnel which is related to the use of the Port by the Ship and which involves the fault, wholly or partially, of the Master, officers or crew, including negligent navigation;
 - (iii) any loss suffered by the Company with respect to a hazard under paragraph 7 hereof;
 - (iv) any loss or damage to the Ship while in Port, including consequential losses and all claims, damages and costs arising therefrom, regardless of any act, omission, fault or neglect on the part of the Company; and
 - (v) any personnel injury or property loss suffered by the Master, officers or crew, of the Ship while in Port, including consequential losses and all claims, damages and costs arising therefrom, regardless of any act, omission, fault or neglect on the part of the Company.
7. If the Ship or any object on board becomes, or is likely to become, an obstruction, threat, or danger to navigation, operations, safety, health, environment or security of the Port (a "hazard"), the Master and the Owner shall, at the option of the Port Management, take immediate action to clear, remove or rectify the hazard as the Port Management may direct, or the Port Management shall be entitled to take such measures as it may deem appropriate to clear, remove or rectify the hazard and the Master and Owner shall be responsible for all costs and expenses associated therewith.

8. Any liability incurred by the Master, Owner and/or Charterer by operation of these Conditions of Use shall be joint and several.
9. Without limitation to the liability of the Master and the Owner, the Master shall immediately report to the Port Management any accident, incident, claim, damage, loss or unsafe condition or circumstance. Any such report shall be made in writing and signed by the Master. The Port Management shall be entitled to inspect and investigate any such report but without prejudice to the foregoing.
10. These Conditions of Use shall be construed, interpreted and applied in accordance with the laws of the State of Qatar, and, with respect thereto, the parties named herein submit exclusively to the jurisdiction of the courts of the State of Qatar.
11. Subject to condition 12, any liability of the Master and Owner to the Company by virtue of the operation of these Conditions of Use shall be limited to US \$150,000,000 for any one accident or occurrence.
12. The limit of liability set out in condition 11 shall not limit, restrict or prejudice any claim or right that the Company has or may have against the Master and/or Owner under general principles of law or equity. For the avoidance of doubt, said limit of liability shall only apply with respect to, and to the extent of, a claim by the Company against the Master and/or Owner under these Conditions of Use.

Signed and acknowledged:

By: _____

Date: _____

Time: _____ GMT

Attn: Mr. Charlie

1/2

Annex 13



UNITED ARAB EMIRATES
Department of Sea Ports and Customs
SHARJAH

CONDITIONS OF USE : NOTICE TO MASTERS

YOU ARE HEREBY ADVISED : That the conditions of use of the ports of Sharjah are as follows:

1. Pilotage is compulsory for all ships entering or leaving Sharjah Ports and Creeks. The Port accepts no responsibility for any damage occurring during the berthing or unberthing of your ship. The vessel should at all times remain under Master's command and pilot's advice. Pilot's advice shall not under any circumstances exonerate the Master and Owners from liability for any damage occurring during the berthing / unberthing operation.
2. The Master and Owners of a vessel shall be held liable jointly and severally for any actual and consequential damage whatsoever, howsoever caused by their vessel, or assisting tugs or servants including Sharjah Ports Authority employees and contractors, to any of the assets, structures, equipment, craft or property of the ports and/or other vessels and craft within the Port's jurisdiction. Sharjah Ports Authority reserves the right to detain the vessel until security has been given for the estimated amount of damage caused. Estimated damage shall be drawn up by an approved Lloyds Surveyor or other competent Person.
3. a) Sharjah Ports Authority, Department of Ports & Customs accepts no responsibility or liability whatsoever for any actual or consequential damage to the ship, its structure, its handling gear, equipment, or fittings, or to any of its cargo, howsoever and by whomsoever caused during the vessel's port call and associated activities.

b) In the event of any accident occurring, howsoever caused, which involves port stevedores and / or others during the course of cargo handling or the vessel's shifting or hauling operations, the Master and/or Owners, and/or Operator, and/or Charterer shall be held liable jointly and severally for settlement of any claim for either direct or consequential loss that may arise out of the accident. Sharjah ports authority reserves the right to conduct its own investigation into any incident and to interview and obtain statements from the Master and other servants of the Owners, Operator, or Charterer.

c) The Owners, Master, Operator, Charterer or their Agents agree to indemnify and hold harmless Sharjah Ports Authority, its employees, servants, any of its agents, or contractors from and against all losses, claims, demands and suits for damage to the ship and/or assets and for death or personal injury that may result as a consequence of services rendered within the port.
4. The Master must formally declare to the pilot upon boarding any manoeuvring deficiency or limitations of the vessel.

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5. When alongside the berth, or on moorings, the Master shall ensure that:

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- a) His vessel is adequately and safely manned and ready for all emergencies and is ready for hauling or shifting at any time as required by the Port Authority (prior notice will be given under normal circumstances).
 - b) A safe and proper accommodation ladder, provided with safety net, is adequately lit during the hours of darkness and properly watched throughout.
 - c) Rat guards are provided and fitted securely to all mooring ropes and / or wires.
 - d) No substances, matter or material are discharged or thrown overboard, either into the water or onto the jetty.
 - e) If hazardous substances are being worked, the relevant International Regulations and Recommendations together with the Port's regulations are fully complied with.
 - f) He and his crew should duly respect the customs and traditions of Sharjah whilst on board and during shore leave.
6. All Tankers, Car Carriers (Ro / Ro + Lo / Lo) must have fire wires rigged, Fore & Aft, ready and constantly tended to remain 1.5 metres above the water for emergency towing.
7. The Masters of all Car Carriers must produce a Fire Fighting & Emergency Plan to the Port Authority upon arrival.
8. The original copies of all the ship's Certificates shall be produced to any Port Official on demand. Where a ship is more than 15 years old, a valid Certificate of Condition and Seaworthiness issued by a recognised Authority or Agency shall be on board.

Where certificates are found to be invalid, and notwithstanding any fines payable, the ship may be removed from the Port Area at ship's expense and re-entry permitted only after validity has been confirmed.

Failure to produce any certificate to a Port Official when demanded renders the Master and Owners jointly and severally liable to a fine of up to Dhs. 50,000 in addition to the removal of the ship from the Port Area.

9. No engine repairs may be undertaken which would prevent the movement of the ship under her own power, without first obtaining the written permission of the Harbour Master.
10. Any kind of pollution in Sharjah Waters is strictly prohibited. The Master and/or Owners and/or Charterer and/or Operator of any vessel causing pollution shall jointly and severally be held liable to a fine of up to Dhs. 500,000, in addition to any other expenses which may be incurred in the removal and clean up of such pollution. They shall also jointly and severally be held liable for damages and claims filed by third parties.
11. The Master must declare to the agents any stowaway on board prior to arrival and also to the pilot upon boarding. Failure to do so will lead to serious consequences.
12. All vessels (except container ships) which use the container berths 1A, 1 and 2 should obtain permission from the Port and/or Sharjah Container Terminal Prior to using ship's Crane or Derricks.

TOTAL P.02